

PROCEEDINGS

of a

MILITARY COURT FOR THE
TRIAL OF WAR CRIMINALS

held at

LUNEBURG, GERMANY

on

THURSDAY, 8 NOVEMBER, 1945,

upon the trial of

JOSEF KRAMER

and

14 Others.

FORTY - SIXTH DAY.

Transcript of the Official
Shorthand Notes.

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(At 0930 hours the Court reassembles pursuant to adjournment, the same President, Members and Judge Advocate being present).

(The accused are again brought before the Court.)

THE PRESIDENT: Major, Winwood, do you address the Court.

MAJOR WINWOOD: We have now reached the stage in this trial when all the evidence that is going to be produced has been laid before the Court, and it has been evidence at one time or another produced by the Prosecution to say that all the four accused whom I represent were at Auschwitz and at Belsen. Further, I do not dispute the fact that Kramer and Klein and Weingartner were for certain periods members of the staff at both those camps and therefore, to a certain degree, responsible for their administration, and the degree of responsibility should be considered according to the period when they were at the camp and according to the position which they held in those two camps.

Now with regard to the times that my accused were at Auschwitz and Belsen I do not think there is any dispute. Kramer was at Auschwitz from May to November, 1944; Dr. Klein was there from December, 1943, to December, 1944, and then Weingartner was there from November, 1943, to January, 1945. At Belsen Kramer was there from December, 1944, till the liberation; Dr. Klein was there for ten days at the end of January and then from the beginning of March until the liberation; and Weingartner was there from February, 1945, until the liberation.

When I say "liberation", I mean the time when Colonel Taylor, the Allied Military Commander, relieved Kramer of his command on the afternoon of the 15th April.

With regard to my fourth accused, Kraft, I shall invite the Court to say that he never was at Auschwitz, that he spent three days in the Wehrmacht barracks at Bergen, and that he was never a member of the staff of Belsen concentration camp. Any remarks that I make with regard to the conditions and responsibility at Auschwitz or Belsen I wish the Court to consider as being confined to Kramer, Klein and Weingartner.

To begin with, I wish to draw a distinction between Auschwitz and Belsen. At Auschwitz thousands of people were killed; at Belsen thousands of people died. But there is no dispute that at Auschwitz there was a gas chamber in which thousands of people met their end. It is, I think, clear that this was one of the methods used by the Germans for the liquidation of those people that were of no use to the German Reich. It is quite clear that this gassing was carried out on the orders of the very highest authority in Germany, and that as that order came down from superior to inferior the order became more direct and more difficult to disobey. It is, I think, fair to say that the only real evidence regarding the chain of evidence at Auschwitz in connection with the gas chamber comes from the accused S.S. men and from Dr. Bendel.

The whole composite camp at Auschwitz, Auschwitz 1, 2 and 3, and the labour camps, was controlled by the Commandant of Auschwitz No. 1 who, during the period with which I am concerned, were in turn Hoess, Liebelenschoel and Baer.

X (At the start, I invite the Court to read into the telegram, which is Exhibit "119", the fact that Hoess was sent to Auschwitz to deal with the gassing of the incoming Hungarian transport. On his arrival at Auschwitz as Commandant of Birkenau, Auschwitz 2, Kramer was informed in writing by Hoess that he had nothing to do with the gas chamber or with the incoming transports. Dr. Klein has told us that when he had to attend the arrival of incoming transports he received his orders direct from the senior doctor at Auschwitz No. 1.

A

Hoessler has told us that when he had to attend as Lagerfuhrer he received his orders directly from Hoess.

There was a political department at Auschwitz No. 1 which was responsible for the incoming transports, and we have had evidence that a member of this department used always to be present at the selections of the incoming transport. Dr. Bendel, who himself worked in the crematorium, has told us that a member of the political department always brought the news from the station to the crematorium that a transport was coming down to the gas chamber.

He has also told us that the political department directly controlled the Sonderkommando, who were the people who worked in the gas chamber and who actually did the gassing.

You have thus, I submit, this chain of command: Commandant of Auschwitz, the political department and the Sonderkommando, and in this chain of command the Commandant of Berkenau does not appear.

Dr. Klein has freely admitted to us, both in his statement and in this Court that, acting on orders by his superior officer, he made the selections of the incoming transports. He further said that he never protested against people being sent to the gas chamber, although he never agreed with it. One cannot protest when in the Army. The order which he was given and which he carried out, was in itself lawful, namely, to divide the people into those fit for work and those unfit for work. He knew, of course, that the unfit would go to the gas chamber, and he has admitted that he realised it was murder. This, I submit, is a clear case of acting under superior orders, and I wish to adopt what Colonel Smith has said on this point yesterday. What could Dr. Klein have done? If he had refused to make the selections himself other doctors would have done it. If all the doctors had refused, quite apart from what would have happened to them, the selections would still have gone on, and I submit the selections would have gone on until every S.S. man in Germany at the same time refused to do it.

Dr. Klein did at least carry out these selections on a medical basis, and not as a mere automaton of the liquidating machine, and he may thereby have saved some lives of people who would otherwise have gone to the gas chamber.

In deciding whether to make the selection or not, Dr. Klein had free will, but the exercising of that free will was prevented by the lack of any Court, body or person, to whom he could appeal against the order that was given to him. A British soldier can refuse to obey an order and he will face a Court Martial, when he has an opportunity of contesting the lawfulness or unlawfulness of the order which he has been given. Dr. Klein had no such protection.

There were also selections in Berkenau, in the hospital and in "C" lager, both of which Kramer has told us were in his camp but not under his command. He has also told us that all orders for the dispatch of distant kommandos came from Auschwitz 1.

In addition to this we have heard from the witness Tuchmann, Transcript 14, that the transports originally arrived at Auschwitz station, and that it was only later that they built a ramp in Berkenau as a matter of convenience, and I would invite the Court to consider this ramp, as well as the crematorium itself as under the command of the Commandant of Auschwitz, although in the geographical area of Berkenau.

With regard to the crematoria, Kramer has told us that it was in his area and not under his command. When the mutiny of the 7th October took place, and the crematorium was set on fire, it was a company of S.S. men from Auschwitz 1 - Dr. Bendel told us - who came to take charge of the

revolt, and it was the Commandant of Auschwitz himself who came down and ordered the execution.

Thus, on this point, I make the submission firstly that there is ample evidence that the political department which, we are told, is partly the Gestapo and partly the criminal department, was the organisation responsible within the camp Auschwitz, under the Camp Commandant of Auschwitz, for the bringing into the camp of internees and for their ultimate disposal, and secondly that over this disposal Kramer had no authority, and that his real position should be compared with that of a Commanding Officer of a transit camp, whose responsibility is purely confined to the administration of the people inside the camp until a posting order is received. In Birkenau people were posted to other camps, to labour camps, and to the gas chamber.

I wish to say a few words about the activities of my first three accused with regard to the selections. I do not propose to go into great detail with regard to the procedure of selections, and I wish to adopt in advance what my friend Major Cranfield is going to say on the matter.

There are, of course, many allegations against Dr. Klein that he took part in selections, and one affidavit of Stojowska (Exhibit "24") said that he sent thousands to the gas chamber.

I do not wish to say any more about him except to emphasise that he has told us - and he of all people ought to know this - that the actual selecting was done exclusively by the doctors.

There are allegations against Kramer that he took part in the selections himself. The affidavits of Stojowska and Trigger (Exhibit "27"), say that he took part. The witness Sunscheln and Rosenzweig and Szafran and Hammernasch, state that he was present, but in each case there was a doctor there as well.

The witness Binke said that he took an active part and the witness Hammernasch added that he himself chose people. Rosenzweig (Transcript 10) said that he supervised the doctors.

Kramer was Commandant of that part of Auschwitz where all the selections took place, and he admits that he often, in the course of duty, stopped and watched the selections, and he denies categorically that he himself made the selections, and he also denies that on behalf of his S.S. staff. He had been expressly forbidden by Hoess to have anything to do with the gas chamber and Kramer, as can be seen from the Natzweiler evidence, was a man who was prepared to carry out his orders and carry them out explicitly.

With regard to the evidence of Binke and Hammernasch, I wish to leave any comments on that until we get to Belson.

The witness Lasker (Transcript 13) says that Kramer showed the way for those to go into the camp and for those to go to the gas chamber. I invite the Court to consider that this really means nothing more than that Kramer showed the people, after they had been chosen, which party they were to join.

My third accused, Weingartner, is not alleged to have been present at selections or to have taken any part in them but he, like everybody else, lived under the shadow of those death chimneys, and for that there may be a measure of responsibility. But were all Germans, who knew either directly or indirectly about what was happening to the Jews at Auschwitz or Maidanek, or any other concentration camp, in any different position from Weingartner and has Weingartner any more responsibility than they? I do not wish to say anything about Kramer with regard to the gas chambers.

In addition to the gas chambers, there have been allegations that various experiments were carried out in Auschwitz by the S.S. doctors. Dr. Bendel has spoken of experiments carried out by Dr. Mengele. We have had the evidence of one doctor who worked in the hospital at Berkenau, Dr. Binko, and she said that experiments may have been carried out in block 10 in Auschwitz but that no experiments were carried out at Berkenau.

The names of many doctors have been mentioned in connection with experiments, but nowhere has the name of Dr. Klein been mentioned, and he himself says that he has no direct knowledge of such experiments.

With regard to these experiments I only want to say two things. Many of them have been described - particularly in the affidavits - and they may appear to us to be cruel and inhuman, but some of the most famous doctors appear to have taken part in them and we have no knowledge of what their value to humanity as a whole is at all.

It has been, I think, made clear that the general conditions at Auschwitz were much better than they were at Belsen. Auschwitz was built - as you have seen from the film - apparently as a permanent concentration camp with permanent buildings, with well built wire fences round with electric current running through it.

We have heard from Kramer - who again should know better than anybody else in this Court - that the quartermaster side of the administration of Berkenau was carried out by Auschwitz 1. The issue of food, clothing and everything else was the responsibility of the Commandant of Auschwitz, and Kramer's position at Berkenau was analogous to that of a Company Commander in the British Army, and that therefore conditions at Auschwitz from that point of view can not be laid at the door of Kramer.

What can be laid at the door of Kramer is what actually happened inside Berkenau from the point of view of the administration of that camp.

I wish to say one word about beating generally. We have heard from various witnesses, from the accused, that beating took place, and I do not propose to deny that. We have heard from Grese that she beat people against orders. We have heard from her that she carried a whip after it had been forbidden by the Commandant. We have heard from Bormann that beating by aufseherin was strictly forbidden. Weingartner admitted to the learned Prosecutor that if he had beaten people while on the kommando Vistula he would have done it against orders. Kramer has said that such beating did not go on, and I ask the Court to consider that this type of beating was done without his authority and without his knowledge.

Kramer has told us what his attitude was with regard to beating, that he forbade the carrying of sticks by those S.S. men who were detailed from Berkenau as guards at the incoming transports. We have heard from the witness Litwinska (Transcript 7) that everybody trembled when Kramer came through the camp, and I ask the Court to consider that the S.S. had the same feeling as the prisoners when their Commanding Officer came round on his inspections, and that if they did beat they beat when his back was turned.

We have heard a lot about the appells at Auschwitz, and I am quite sure that one of my other friends will deal with this subject in detail. I wish, however, to make two points. The first is the evidence of the witness Schopf (Transcript 24) in which she says that the roll calls began at 0600 hours. The second is the description which Kramer himself gave (Transcript 19) the Court of the occasion on which he personally conducted one of these roll calls and the difficulties which he, at whose approach everybody trembled, had to encounter. I do invite the Court to consider the many difficulties there were on these appells and the people who had to cope with them.

X
A
B
There are, however, specific allegations against my first three accused, and I will begin with Kramer. There is an affidavit of Rosenthal (Exhibit "74"), in which it is alleged that Kramer set dogs on and machine-gunned people around a ditch. There has been no other evidence during this trial connecting either dogs or machine-guns with Kramer. We have heard evidence that the S.S. guard Company had dogs, and Kramer has said that it was only the S.S. Guard Company which was armed with machine guns.

✓
Kramer has categorically denied this story, and I ask you to accept his word against this uncorroborated piece of paper.

✓
The witness Glinowieski (Transcripts 9 and 10) produced a story of receiving 25 strokes from Kramer in the Autumn of 1943. Kramer denies that he ever gave Glinowieski this beating, and it has been pointed out by him, and by me, that Kramer was not at Auschwitz at that time.

X
X
The Prosecution has indicated during its case that in the minds of these internees dates did not mean very much, and it is quite easy to make a mistake. It was for this very reason that I specifically asked Glinowieski if his story of this beating was true in substance and in detail, and he was on oath and he said Yes. I do not doubt for a moment that Glinowieski was punished by somebody at some time, because he appears to have spent most of his time doing things against the camp regulations. What I do ask the Court to accept is the fact that it was not Kramer who did it.

✓
Ilona Stein (Transcript 9) and Hammermensch (Transcript 8) allege that Kramer beat people at selections, and against this you have Kramer's denial.

✓
Against the accused Weingartner there are two specific allegations. The first is that of the witness Glinowieski, who alleged that Weingartner beat his brother to death. Glinowieski admits that he did not actually see this happen, and there is no direct evidence that it was Weingartner who did it, nor that he was the only person in the blockführerstube when the beating took place. I will mention that there was evidence that Glinowieski had committed twice in quick succession a very serious offence against camp orders, being in possession of unauthorised articles.

✓
Weingartner denies that he had anything to do with this beating, and I do submit that there is a reasonable doubt that it was Weingartner who was responsible for it.

C
The second allegation concerns the time when Weingartner was in charge of the kommando Vistula, one of the aussenkommandos which was engaged in very unpleasant irrigation work by the river. This allegation is contained in the evidence of Sunschein (Transcript 11) and Lothe (Transcript 27). Weingartner is accused of beating, depriving prisoners of extra food, setting dogs on them, and making them work standing in the water. The witness Sunschein said that the dogs were used for rounding up and chasing the stragglers who were slow in making the grade up the hill, and Lothe said that the speed of the convoy was the speed of the slowest member and a halt was made at the top of the hill to allow the stragglers to catch up, and there was no question of them being chased by dogs. Lothe has said there was no particular beating on this kommando.

X
With regard to the allegation of depriving the workers of their extra food, Weingartner says that this was in his discretion and he only deprived those people of this food if they had not earned it.

It seems to have been Weingartner's misfortune, both at Auschwitz and later Belsen to have been surrounded by a monstrous regiment of women. On this kommando there seem to have been about 30 S.S. men as guards and that the actual looking after 1,000 women was left to him. Not a very enviable

task, and I would respectfully ask the Court to remember when considering whether any of Sunstein's allegations can be regarded as real ill-treatment in face of the difficulties which Weingartner had to contend with.

The next of my four accused, Kraft, is completely different. It is contained in one affidavit, Exhibit "17", by Regina Bialek. It is speaking quite clearly of Auschwitz, and in the middle of paragraph 2 it says: "On another day in the summer of 1943 I saw from about 40 metres away Georgo Kraft (photo 7-5) catch a man who was also speaking to a woman. Kraft battered the man's face and head with a stick so that his head was gashed and blood poured from his mouth and ears. In my opinion the man must have died since no one could have survived such injuries. I later saw his body taken away to the male quarters by other prisoners".

This affidavit, standing completely alone, brings Kraft into Auschwitz, indirectly connects him with the mass killing of four million people, and accuses him of an individual murder of a particularly crude and bestial kind. The time is vaguely stated as the summer of 1943.

Kraft was recognised by the photograph which is before the Court, and I do not dispute that it is a very reasonable likeness. I would just briefly remind the Court of what Kraft's movements were at that time. In the summer of 1943 Kraft was in Rumania and arrived at Vienna in July. After eight days he went to Buchenwald and got to Dora in the beginning of September, where he stayed until January, 1945. The witness Hornum (Transcript 29) and the accused Klippel (Transcript 20) confirm this and Kraft says that he has never been to Auschwitz.

I should like to add one thing about this affidavit as an affidavit. This affidavit has been let in as evidence under the Royal Warrant as being of assistance in proving or disproving the charge. Now in view of the fact that there is no other evidence against Kraft with regard to this charge, I fail to see how it can be said to be of assistance in proving or disproving that charge, for it is in fact the very charge itself. The learned Judge Advocate has several times drawn our attention to the fact that we can comment on the weight to be given to affidavits, and I ask the Court to agree that in view of the oral evidence before the Court this affidavit is completely without weight.

Belsen
At Belsen thousands of people died and the British found their bodies there when they reached Belsen on the 15th April and many died later. The Prosecution allege that this was caused by criminal neglect and by deliberate starvation and ill-treatment with the malicious knowledge that they must cause death, and that Kramer is indicated as being primarily responsible.

I now submit to the Court that there is not sufficient evidence before the Court to warrant the Court in finding that there was any deliberate attempt on the part of Kramer or his staff to starve or ill-treat the internees who were in their charge. It may be alleged by the Prosecution that there was a deliberate plan in the minds of the higher German authorities that Belsen was to become a death trap of starvation in the same way as Auschwitz was a death trap of gassing. The Prosecution may further allege that Kramer was a party to this plan. If it is not put as high as that it may be alleged that Kramer and his staff, by carrying out these orders they were given, and by running Belsen camp at all, became a party to this scheme.

A / Now the only evidence of a high level policy is what Kramer has told us himself, and that is what he was told when he went to Oranienburg. Belsen was to be a camp for sick people and it would contain all the sick prisoners from the northern part of Germany and also all the sick prisoners from the working camps in North-west Germany; the total was to be about 17,000 to 18,000.

When these sick people had recovered they were to be built up again into arbeitskommandos and go back to work again. At Belsen he was told he would also find a part of the camp occupied by these exchange Jews.

Now I do not know what the learned Prosecutor is going to say about the underlying scheme of Belsen camp, and for that reason I tend to anticipate the worst and to assume that he will say something as follows: At Auschwitz people were selected as fit or unfit for work. The unfit were sent to die in the gas chamber. In north-west Germany people were selected as fit or unfit for work and the unfit were sent to die at Belsen.

We have no evidence of what was in the minds of people like Gruppenfuhrer Pohl or Gruppenfuhrer Glucks. It is perfectly possible that the idea really was - and this is the only evidence we have - to build up new working parties to cope with the shortage of workmen which obtained in Germany at this time.

At this period, the beginning of December, 1944, there was no sign of an immediate collapse of Germany. By the time the transports of sick really began arriving at Belsen it was clear that the German Armies were doomed, and from that time onwards it does seem unlikely that the German high authorities did do much for more foreign internees at Belsen.

X A Kramer wrote to Glucks in his letter of the 1st March pointing out that he realised that he realised that, saying: "I know that you have far greater difficulties to overcome". I submit that there is no evidence that Kramer was in any way acting in concert with the official at Oranienburg in any plan at all with regard to any deliberate starvation. Indeed, in his letter of the 1st March he says, speaking of the health of the internees: "An improvement in their condition and return of those detainees to work is, under present conditions, quite out of the question". He was quite obviously trying to get people back into this condition of being fit for work as far as possible. He did say later on that certain people were sent again out to work, and that is confirmed by those strength returns which were handed in by the witness Muller, that people did leave Belsen in large and small parties during these months.

What happened at Belsen? When Kramer got there on the 1st December, 1944, he took over a strength of 15,000 internees, about half of whom were sick. On the 15th April, 1945, there were about 41,000 of whom the vast majority were sick. This large increase came about by the influx of countless transports from other concentration camps which poured into Belsen as the British Army poured into Dunkirk in 1940. They came in small parties, large parties, medium parties; they came by rail, they came by road and many of them walked. We have had a very detailed description of one walk, one difficult journey, from Dora to Belsen, and that, I submit, is an example of what was happening.

We have been told that in some of these transports, for example one in the middle of March that over a quarter were actually dead with they arrived. In the affidavit of Weigner (Exhibit "93"), it is stated that in many cases a quarter of the prisoners were dead in the railway carriages that brought them to Belsen. Dr. Leo (Transcript (11) tells us that 400 died out of a transport of 2,000, and that the remainder were so weak that they had to be helped at each step.

What did these half dead people find when they got to Belsen? They found a camp already over-crowded; they found disease rampant, especially typhus, and we are told that typhus is a wasting disease. They found the food, even if they received the maximum they were entitled to under the German rationing scale, insufficient, and as conditions in Germany deteriorated generally from January onwards as the Allies advanced, and as the general loss of control and administration of the country went to pieces and transport came to a standstill, so did the influx of internees to Belsen.

X
The Court has, I think, had placed before it sufficient evidence to have a picture of Belsen during the period of December, 1944, until the liberation, when order which Kramer established changed into disorder, and when disorder changed into chaos. Belsen, in itself, was an example of what was happening to Germany as a whole country, and what is now happening in the British zone in Germany.

Colonel Johnston in his affidavit (Exhibit "3") said: "In my opinion all those in any way responsible for ordering or carrying out orders which resulted in this state of affairs" - that is the state of affairs which he found - "must inevitably have known that it was bound to result in deaths on a gigantic scale, and that such deaths were the only possible outcome of such orders and the carrying out of such orders".

X
We know what the orders were, that these people were to come to Belsen. Now what did Kramer do? His first duty was to keep his Headquarters informed of the position and find out what they were going to do about it.

X
We have heard from Kramer that in January, not very long after he got there, Dr. Lolling paid a visit to Belsen. Dr. Lolling was the senior medical officer in the whole concentration camp service and was the man who you would expect to arrive at a camp which had been allocated as a sick camp.

X
He came, inspected the camp, and returned to Berlin, and he must have gone back with a picture of what the present state was at Belsen, and he must have realised what the future was going to be if the transports were sent there. But as so often happens after visits by people like him, nothing happened, and in February a transport brought typhus into the camp.

A
Kramer had been provided with very little medical or hospital facilities, and there was not much he could do for the people who had typhus in the camp. But one thing he could do and that was prevent the other people from coming into the camp and getting this infection, and so he closed the camp.

"
He reported that to Berlin, and he was told to open it again, keep it open, and that prisoners would come to Belsen typhus or no typhus. Kramer, with the rank of Captain, commanded a unit a very long way away from his Headquarters, and he knew, like any other equivalent commander in any other Army that he had to go on hammering at his superior authorities if anything was to be done. On the 1st March he realised that nothing was going to be done, and so he wrote a dispatch to his superior officer, Glucks, telling him what the present position was at that date and prophesying a catastrophe.

X
I ask the Court to accept this letter as a copy of the one which he wrote and which he dispatched to Glucks.

It has been suggested by the Prosecution that this letter was planted by Kramer to cover himself in case he had to account for his actions, but I would remind the Court that Kramer himself was on oath and swore that he sent that letter.

B
I would also remind the Court of the affidavit of Volkmarth (Exhibit "116") in which she says that Kramer told her on the 20th March that he had made a report about the state of the camp and that Obergruppenführer Pohl's visit at the end of that month was the result of that report.

Is that not just the sort of letter that a Commander of a unit like Belsen concentration camp would have written to his superior officer? If you are going to write a letter for future people, to try and white-wash yourself, one could have written a far stronger letter and put much more into

it, and I submit it does bear out the evidence of many of the Prosecution witnesses of the state of affairs at Belsen at that time.

When Pohl came down to Belsen in March he promised two things. He promised to put a stop to the transports coming into Belsen, and he promised to deal with the removing of these exchange Jews. The second apparently did take place, but the transports still came rolling in.

X
C
As Dr. Leo told us, the result of all these inspections was that everything remained as it was. Where does the blame lie for this state of affairs? I think that Dr. Klein and Dr. Leo, who both knew the situation and appreciated what was happening, were right in what they said. Dr. Klein, in Transcript 21, said: "They" - that is the people from Berlin - "came, they saw and they knew, and in my opinion they were wholly responsible for these conditions, because they were sending thousands and thousands and thousands of people into that camp without providing them with anything which they needed".

A
Dr. Leo who, if anyone, is an unbiased witness, in Transcript 11 says: "The S.S. leaders, well knowing the conditions of the camp did not hesitate to throw in more and more thousands of prisoners into our camp".

I do submit that if blame can be attached to anybody in these chaotic months before V.E. day, it should be laid at the feet of that gang of men at Oranienburg who left Kramer in the lurch.

X
But the Prosecution may say: Well, what did you do about this? Did you try and do anything? I should like to deal with that under various headings, the first with regard to food. We have had a lot of evidence in this Court to the effect that the internees only got half a litre of turnip soup a day. Some witnesses, like Le Druillenc, say that no food or water passed his lips for, I think it was, five days. If this evidence is analysed it will, I think, be clear that the witnesses are practically in every case speaking about the last period from about the last week in March to the date of the liberation.

X
We have also been told that in that period there were cases of cannibalism, and I do not dispute it. You have heard the evidence of Unterscharfuhrer Muller who, more than anyone else at Belsen, should have known the supply situation.

X
B
He produced the indents and the strength returns, which I submit if carefully compared, agree with the scale laid down by the German authorities. It is, of course, quite impossible for the defence to prove what food got to Belsen. The records have been destroyed and the person responsible, Vogler, is unobtainable, but I do ask the Court to agree from the evidence of Muller that there is evidence that firms were dispatching food to Belsen regularly and that certain foods, for example meat and bread, were arriving as late as the 7th and 11th April respectively.

May I say one word about Muller's evidence. You have seen from the documents that he handed in that an indent is based on the average strength of the preceding month, and it follows that large and sudden increases in numbers become more and more impossible to cope with because there is always that time lag until the state of affairs is reached, as Schlenker told us, when from the 8th April onwards there was only 400 litres of soup for 1,200 prisoners.

III
I think it is quite clear that at the beginning of April food was scarce in Germany as a whole; transport had broken down and chaos had started. Inside Belsen camp there was chaos too. Muller issued the food to the cooks who cooked it and issued it to the internees, and once it left the cookhouse it became the responsibility of people other than the S.S. to distribute it.

C/ We were told that by Francish, who was one of the cooks, and I do not think that people like Kramer and Muller really know what went on after the food had left the cookhouse and got to the blocks.

A/ The witness Szafran (Transcript 7) has told us that the food depended on the effort of the lagersalter. The witness Dialek (Exhibit "127") told us that kapos deprived women of their proper share and kept it for themselves. Lothe has told us that prisoners in the food stores bartered with the kapos and that kommandos stole potatoes from the cellar.

The recent Polish witnesses we have heard told us that restraint had to be used to prevent people from getting a second helping before some people had got their first, and Francish has told us that the containers were often only half full when they actually came to the blocks.

This all points to the fact that the method of distribution was bad, and for that, of course, a certain amount of responsibility does rest on the S.S. staff. But would any other methods have been successful with the food which was available at that time with groups of people clamouring round for food that did not exist?

When the British came there was plenty of food and they said there was no difficulty in distribution. When there is enough for everybody and everybody gets some, everybody is content and nobody clamours and nobody tries to take other people's food.

X The cookhouse at Belson worked under great difficulties. We have heard that it needed three cookings for each meal, but the cookhouses were working up to the date when the British came and we have heard from witnesses like Sunschein that girls worked in these cookhouses for 18 hours a day, so it does show that something was being done in the circumstances at Belson.

X At the beginning of this case I at any rate got the impression that there was no water at Belson. We have, during this case, heard evidence of different kinds tending to show that there was water in Belson camp and it was the main supply up to the 12th or 13th April.

X The accused Otto told us this was because he was an electrician working the electricity side of the camp, and that was when the light finally went off.

X We have heard of this hand pump near cookhouse No. 3 from the accused Haschke, which went on working after the electricity was cut off. We have heard of these large concrete ponds, three in the men's camp and one in the large women's compound which, if kept clean, I submit would have supplied not adequate but certainly some supply of drinking water for the internees. Kramer has told us that he had these cleaned out and refilled.

I do not think it is fair to suggest that all the filth in these concrete ponds was put there by the S.S. There was not an adequate supply of water, but there was water there.

Beds and blankets were very short. <Beds were practically non-existent and Kramer specifically mentioned these two things in his report on the 1st March. He has told us that beds did arrive but they were, of course, only a drop in the ocean. Prisoners were told to bring their own blankets but in fact in many cases they did not.>

Brigadier Glyn Hughes has told us about the lack of sanitation which he described as practically nil. It was, of course, quite inadequate. Kramer has told us in transcript Volume 19 page 29 that he gave orders that ditches were to be dug by each block. <If these orders had been properly carried out and supervised by the block altestors and people concerned things would have been very much better.>

One other point with regard to sanitation. Most of the prisoners, you have heard, were very ill and were not able, if there had been sanitation, to have made full use of it.

It has been suggested that it was only when Kramer knew the British were coming that he tried to dispose of the dead bodies. At the beginning use was made of this small crematorium at the far end of the camp which was adequate at the beginning of the time but as transports kept coming in and as dead bodies were being brought from Bergen station to the camp it was impossible for the crematorium to cope with them. We have heard that they made these large funeral pyres in the camp to burn the bodies. Dr. Lee has told us that that was eventually forbidden by the Forestry Commission because there was not the wood available in that quantity. It must be remembered that people were dying at a very high rate every day and it was not until about the 5th April that internees arrived in the camp who were capable of dealing with this problem and of digging mass graves and burying the bodies. It was not until about the 5th April that these people arrived from the labour camps.

When handing over a camp to an incoming unit the outgoing unit always makes a special effort to leave the place in as good a condition as possible and I submit that this last minute effort on the part of the camp staff at Belsen was really only getting the place ready. It was not because people like Kramer were afraid of what would be said about the dead bodies lying around.

We have heard a lot at Belsen about the appels. <We have heard that when Kramer came to Belsen appels began. Appels, we have heard, were a part of concentration camp life and it was the only way of being able to make out a strength return for rations and the return which had to go to Oranienburg, especially when transports were coming in at the rate they were coming in. Both Grosse and Ehlert have told us that these appels later, when they arrived, took place only twice a week. Synger has herself told us that there was a regulation in the camp later on that sick people were allowed not to attend appels outside their blocks. Kopper has told us that in Blocks 205 and 224 the sick people did not have to go outside. Polanski and some of the other Polish accused have confirmed that that was so in Blocks 12 and 16. We have heard that towards the end when people were nearly all sick they were not called out on these early morning appels but it was done in the blocks.>

We have heard evidence relating to many concentration camps in Germany, and we have heard that at these concentration camps beatings took place. That there was beating at Belsen no one is going to deny. I do not wish to deal with this in detail because I am sure somebody else will, but I have to make two points. The first is that certain force was necessary to restrain the internees particularly when the shortage of food came. There

is evidence from various people, not the accused, that this force was necessary. One example is the affidavit of Klieblau (Exhibit "140").

The second point I want to make is that the language was to a certain extent the language of a concentration camp, blows. I suggest that does give a picture.

The learned prosecutor asked Kramer why he did not appeal to the general at the Wehrmacht barracks two or three kilometres down the road and ask him for help. Why did not the general himself take the first step? After all, he was the senior officer on the spot, the garrison commander, and to his successor was entrusted the handing over of Belsen camp to the British.

However that may be Kramer did in fact himself to and see the General when the situation reached the impossible when he had notice of the prisoners coming in. His camp was then completely overcrowded and he then received notice that 30,000 more people were coming. Without in any way wishing to belittle the efforts which the accused Hoessler made when he came to Bergen-Belsen I do say that it was to a large extent due to the groundwork of Kramer that this 15,000 prisoners did not find themselves hurled into the chaos of Belsen but lived in comparative comfort and decency in the barracks.

One other point about this question of the general. By this time, about the beginning of April, it was quite clear the war was coming to an end and I venture to think that the Wehrmacht authorities began to feel a pang of conscience. Kramer says that he was convinced that if he had gone to the general previously and appealed to him he would not have had any result. He knew what the attitude was of the Wehrmacht to the S.S. and I think that is amply borne out by comparing the actual terms of the truce with the version given by Colonel Harries to Kramer, which, I submit, was a piece of pure deceit on the part of the colonel of the Wehrmacht and if it had not been for that many of the S.S. would have stayed behind at Belsen and prevented the internees from spreading around the countryside and not being there when the British came.

A I do not wish to deal any further with the general conditions at Belsen except to ask the Court to accept Kramer's statement that he did all he could in the circumstances. There are specific allegations against Kramer for ill treatment. All of them have been denied except the occasion when he says that he slapped the Russian girl who was brought back after attempting to escape. I refer to the evidence of Ehlert and Volkenrath.

B I wish to ask the Court to consider the story of Binke and Hammormasch with regard to the killing of the four Russians and the possible death of one as a pure invention thought out by these two witnesses, who appeared in quick succession in this Court, for the sole purpose of having a go at Kramer their former commandant. I submit that it is for this reason too that these two witnesses accused him of taking an active part in the selections at Auschwitz.

The witness Sompolinski came into this Court and glibly accused Kramer of shooting two Hungarians and wounding himself in the hand. I do not wish to say any more about this witness until I deal with the evidence against Kramer.

C Dr. Klein was at Belsen. Dr. Klein was in charge of the medical side as a locum for ten days in January when he relieved Dr. Schnabel and he was told by Dr. Schnabel to carry on as Dr. Schnabel had been doing. After that he went away and he came back and was an assistant Dr. Horstmann and was under Dr. Horstmann's orders. He has told us that during this time he kept on asking Horstmann to send reports every day to Berlin complaining of the state of affairs because he realised what the state of chaos was.

✓ What could he do? (He was under Dr. Horstmann's orders. He was not the senior doctor. He has told us that Dr. Horstmann specifically allocated him to looking after the S.S. troops and S.S. personnel and it was only three days before the British came that Dr. Klein did become the chief medical officer and the only medical officer at Belson concentration camp. You have heard from him and Dr. Lee what Dr. Klein did succeed in doing in these last three days.

Of course, it can be said that he did that because he knew the British were coming but, at the same time, it was the first time that he was enabled to do anything on his own as the chief medical officer.

My next accused is Weingartner. Weingartner admits beating and he has the honesty to admit that the weapon which he used was a piece of rubber hose. One man, Weingartner, finds himself surrounded by a mob of women and he says that he had to fire over their heads to keep control. I refer to the evidence of the witness Sunschein, Volume 11 of the transcript. On this occasion when the personnel in the cookhouse were being changed round, and there were crowds of candidates for these positions, Sunschein was the kapo responsible for keeping order and as order was not kept by her in a fit of impatience he hit her. I submit that in the circumstances it was reasonable and I suggest that the extent of the beating and the injuries caused were grossly exaggerated by the witness.

4 The accusations against Kraft are contained in the evidence of Sompolinski, Volume 13 of the transcript. Sompolinski makes the following points. He recognised in Court No. 4 as being in the stores at Belson. He says that he shot people when dragging bodies to the grave. He says that he shot at people trying to cross the wire near Block 9. He says he saw him in No. 1 camp seven days before the British came, and he also made the curious remark that he was always trying to do it to everybody. I submit that this witness came to this Court and made this wild accusation against No. 4 and the other wild accusation against Kramer without any regard for the truth.

4 There is, I submit, overriding evidence that Kraft did not arrive at Belson until the night of the 11th/12th April. The accused Klippel in Transcript Volume 28 says that he met him at the aerodrome on the night of the 10th/11th April. Klippel and the witness Klitcho, transcript volume 28, said they slept in the same room as Kraft in the Wehrmacht barracks until the 16th April.

4 The accused Schmitz has told us that because of typhus the ordinary S.S. men could not go from Camp No. 2 to Camp No. 1 and apart from Sompolinski there is no evidence that Kraft ever set foot in No. 1 Camp. From the description that Sompolinski has given the Court I submit that this could not conceivably be a description of any part of No. 2 Camp and I ask the Court to accept Kraft's story in toto.

4 Block 9 was a well known block to us, the store block in No. 1 Camp. Sompolinski mentioned barbed wire. There was plenty of barbed wire in No. 1 Camp but we have heard from witnesses, including C.S.M. Mallon, that there was no barbed wire in No. 2 Camp. I will go further and say that for the three days when Kraft was in the Wehrmacht barracks he was a member of Dora concentration camp in transit or possibly an inmate of the Wehrmacht barracks under the command of Col. Harries, but it seemed it was Col. Harries and not Kommandant Kramer who made himself responsible for the administration of the camp. If No. 2 camp is considered to be under Kramer I suggest that it was a completely separate part with its own administration under Hessler and Brenner, with its own records which were brought from Dora, and that members of that staff cannot be considered as members of the staff of Kramer's concentration camp.

I will leave that point by saying that I adopt in advance anything that my friend, Major Munro, or any other defending officer may say with regard to the status of No. 2 Camp.

We have heard in this Court three main types of evidence which affect my four accused. The first is the affidavit evidence and I do ask the Court to consider an uncorroborated affidavit as, for example, that of Rosenthal (Exhibit "74") with the very greatest care. The oral evidence against the accused comes to a large extent from witnesses who were formerly victims of the S.S. both at Auschwitz and Dolson. They hate the S.S., and that is only natural. They have suffered terrible things and their minds may be clouded by prejudice and coloured by the fact that now the tables have been turned. Many of these events took place - especially at Auschwitz - a long time before they gave their evidence. Is it not possible that many of the events which they have told us about have been telescoped to make one event which sounds far worse than it ever was? I do submit the Court should very carefully consider this evidence against the accused and be very careful not to confuse fact with fantasy.

My four accused have all given evidence on oath and I ask the Court to accept what they have said and particularly with regard to Kramer's evidence to remember that over many important matters he is the only person who knows what happened. One of my friends further down the line will deal with the question of concerted action and all I wish to say is that there could not have been any concerted action in the chaos of Dolson.

I wish to say that I adopt in toto what Col. Smith has said and also any arguments of a general nature which any of my colleagues may put before the Court, and I respectfully ask the Court to consider these words of mine as a further instalment of what I said long ago on the 19th day of this trial.

In this connection I wish to add one word of personal explanation. It has been brought to my notice that some expressions which I used on that occasion have caused pain and concern to certain organisations and individuals. I did not think it right to mention this officially before because it might appear as if pressure of some kind had been put on the defence. I do personally indeed regret that any words which have been spoken by me in the course of this trial should have added any pain to that race which has suffered so much in Nazi Germany. I feel sure that the Court and those to whom these words are addressed will appreciate that I have been acting only as the mouthpiece of the accused whom I represent and that I have expressed no personal views of my own at all. If any words spoken by me have prejudiced the case of any of the accused they will object and I do not mind because I know that here in this Court they are being tried solely on the evidence.

I wish to close by making one remark about the S.S. All my four accused are members of the S.S. We have heard two views about the S.S. expressed in this Court. We have heard from the accused Schmitz the common view of the ordinary soldier and we have heard from Frau Schreier that the S.S. were the elite of the German Armed Forces, and when judging these four men whom I represent, and when considering the evidence for and against them, I will respectfully ask you to remember that Kraft and Weingartner wore the S.S. uniform under compulsion and that Kramer and Klein did so from conviction.

MAJOR MUNRO: Public opinion throughout Britain and the whole of Europe has been thoroughly outraged by the dreadful conditions found at Dolson on the 15th April, 1945, and also because of what has been disclosed in this case in respect of the gas chamber at Auschwitz. Passions have run high and indignation has been thoroughly roused. We in this Court have the advantage over the general public throughout the eight weeks of careful investigation in the Court and, if I may say so, we are not concerned with moral issues and will not be unless and until such time as any of the accused is proved guilty of the charge or charges against him.

The world is naturally, and very rightly, indignant at what this war has done to innocent people, but let us first of all consider if these 45 accused persons are indeed guilty according to the evidence and according to the law put before you and if you decide on those facts and on that law that they are guilty then the punishment must fit the crime. If, however, on the facts and according to the law there is doubt in your minds, real doubt, reasonable doubt, then the accused must be acquitted irrespective of the quality and nature of the crime.

It is a sacred principle of our law that an accused person is innocent until the Crown succeeds in proving him guilty. That principle is self-evidence, inviolable and sacrosanct, and, in my respectful submission, not even this new conception of collective responsibility can negative that fundamental principle in the slightest degree. On the contrary I submit that that conception ought to make it all the more necessary that the members of the Court should consider the evidence before ^{them} with even greater care and discrimination.

I will deal later in detail with the question of collective responsibility but I should like first of all now to consider very briefly the question of the kind of crimes charged in the indictment. It is ordinary common sense before we go on to decide whether or not a crime has been committed to ask ourselves first of all if what is said to have been done is a crime at all and then decide, if we decide it is, whether it is a crime of which the accused can be said to be guilty. As to Col. Smith's speech yesterday I do respectfully adopt his argument in that connection.

My own submission, applying that argument to my own four accused, is this, that we must start off with a clear recognition of the fact that there was at the time of the offences a conflict between German domestic law and International Law, a conflict the rights or wrongs of which we are not at the moment concerned. Col. Smith has dealt with the legal effect of such a conflict on German Nationals according to the principles of International Law as decided in the High Courts of Britain and other countries. I will not make any attempt whatsoever to elaborate on that.

I will take my stand on the argument that where there is such a conflict a man is not presumed to know International Law and apply it in defiance of his own law. He is bound to obey his own law and if any crime is committed by the exercise of this obedience then it is committed by his government and is a matter for high diplomatic action or, in the case of these matters before the Court now, for accusation, consideration and decision at Nuremberg.

We have heard a lot of evidence in this Court about conditions in concentration camps other than Auschwitz and Belsen. You have listened to a mass of testimony about what I imagine must be nearly every other concentration camp in Germany - Ravensbruck, Nordhausen, Gross Rosen, Buchenwald, Natzweiler and many others. Where all that evidence is leading us to I am not, so far, quite clear, and I feel the Court must be in the same difficulty because all these people here are charged in respect of Auschwitz and Belsen and, of course, very rightly charged because that is where their alleged crime is said to have been committed.

<You have also heard a great deal about this horrible gas chamber at Auschwitz. I submit, with the utmost respect, that we are not here to judge the concentration camp system, we are not here to judge and condemn this ghastly policy of the extermination of the Jews or their persecution. The proper forum for any such judgment and condemnation will be at Nuremberg.

We are, I submit, here to judge people called upon compulsorily by their government to undertake the execution of its policies, just as we ourselves were called upon by our own Government under the emergency powers granted to it by Parliament. > If the execution of a policy in itself

illegal under International Law is yet something these people were bound to do under their own state system they have no option but to obey their own law, and whoever may be accountable to a tribunal founded on the precepts of International Law it is not these accused facing you in the dock to-day.

We are here to judge the manner in which the executive duties were carried out. If, therefore, the Court decides that the charges as laid do in fact disclose a war crime the rest of my speech will concern my case for the accused on that assumption.

I propose to deal first with each of my four accused in turn and then to close with a few points on collective responsibility. Before I begin with the accused Hoessler I would like to intrude some remarks about the prosecution evidence as a whole as it applies equally to all four accused. There are two types of evidence before the Court, the affidavit evidence and the evidence of the witnesses who came here and gave testimony on oath. For the sake of convenience I will call them the affidavit and oral evidence.

This affidavit evidence is something entirely new to the normal process of criminal law. I have no doubt that the defending officers who follow me will have quite a lot to say about these affidavits and the weight which the Court ought to give to them, so I see no need to take up the time of the Court unnecessarily on that matter. I shall confine myself only to such individual affidavits as affect my four accused.

I would like, however, to point out three things which occur to me in general about these affidavits. The first point concerns photographic identification. <The prosecutor has made some suggestion that the accused have now changed in appearance since the date when the photographs were originally recognised. That, with respect, does not seem to me to be a true picture of the position. When these photographs were recognised in the first place it was done by people who knew the accused themselves originally in the flesh and if they knew and if they knew them well enough to recognise them or identify them then they ought to be able to identify them in flesh in the Court.> The only person with whom I am concerned particularly in that connection is the accused Ehler and that arises with reference to the affidavit of Litwinska. <I ask the Court to look at the photographs before the Court and look at the accused now and see for themselves whether any witness who remembered her in Belsen could find such a difference in Court now.> Of course, the prosecution's other witnesses recognised her in Court which itself is proof that she can now be easily recognised.

The second point I have in connection with the affidavits is this, the almost monotonous regularity with which the defending officers have had to ask the witnesses as to discrepancies between their statements and their oral evidence, and that also applies in connection with the accused themselves. The prosecutor has made some play about this, as far as the accused are concerned, but I think that he cannot have it both ways.

The difficulties in making these statements are obvious. A British officer asked questions through an interpreter, the interpreter gave back the answers in English and wrote them down and the thing was read over at a later period, perhaps rather hurriedly, and then the witness swore to it and signed it, and what must be true of the prosecution's own witnesses must also be true for these accused. I submit that the prosecution cannot have it both ways whereas the defence can. The fact that there were these difficulties, the fact that there were these possibilities of error and misunderstanding must have the effect of making all these affidavits thoroughly unreliable and open to suspicion.

The third and last point I have in connection with these statements is the large amount of hearsay evidence which appears in them.

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The third and last point I have in connection with these statements is the large amount of hearsay evidence which appears in them.

Hearsay evidence is admissible before the Court but when hearsay evidence appears in an affidavit it ought to be discounted altogether, in my submission.

As to the oral evidence, there are three types. There is the evidence of the British witnesses, there is the evidence of Mr. Le Druillencoc, Dr. Fritz Leo, Dr. Bendel, etc -- I am speaking as to the general conditions -- and there is the evidence of Dr. Binko and the other Polish and German Jews.

As to the evidence of the British officers I accept that in its main details, with the exception of the evidence of Mr Le Druillencoc. As far as his evidence is concerned I feel that there was not enough before the Court to justify it coming to the conclusion that there were sufficient stores at Belsen camp. He could not tell us anything about the commitments of that ration store; for all we know it might have had to supply three divisions of the German Army. Apart from that I do accept the evidence of these officers. Similarly I also accept the evidence of Mr Le Druillencoc and Dr. Fritz Leo and Dr. Bendel in its main essentials.

As to the evidence of Dr. Binko and the other Jewish girls the Court has had a good opportunity of deciding and making up their minds as to the value of these witnesses. I have had my say about individuals amongst them, and other defending officers similarly, and I think the Court will be in no doubt as to our own particular views. I would like to say, however, that when a girl has been arrested for no apparent reason, sent to a concentration camp and lived in it a number of years, her father and mother and family sent to the gas chamber, and ending her captivity in the dreadful conditions at Belsen, it is not unnatural and not surprising they should come into Court revengeful, possibly vindictive. It is perfectly natural.

In the case of the accused Franz Hoessler we have to deal almost entirely with Auschwitz, but he is also on the Belsen charge and was in fact in Belsen in charge of Camp 2 for a few days so I propose to go on to answer that charge.

The oral evidence against Hoessler is concerned with two types of accusation and two types only, that is the gas chamber selections and also that he was responsible for the public hanging of four women at Auschwitz.

With regard to the selection charges we can again differentiate between the two different types of evidence. There are general accusations that he took an active part in selecting victims for the gas chamber and then there are more special accusations relating to particular incidents.

I will deal first of all with the general accusations. With regard to the general accusations the prosecutor will seek to say that it has been proved by a long succession of witnesses that he was present and took an active selective part in those gas chamber parades. The accused's answer is to admit that he was present on parade to keep order but only in that capacity. He has told the Court quite frankly exactly what his duties were on these parades and how they took place but he insists that he never selected victims himself and, as far as he could, even prevented as many as he could from going to their death. I will deal later with the affect his admissions have on his own liability, but in the meantime I submit that the prosecution's evidence in no way incontrovertibly proves that he did any more than he agrees he did. I submit further that there is simply positive evidence to show why it is that these witnesses might quite easily have thought he was selecting victims.

The prosecution's evidence as to this consists in the testimony of eight witnesses who say he took an active selective part. They are Dr. Binko, transcript 5 and 6; Anni Jonas, transcript 7; Dora Szafran, transcript 7; Hanka Rosenways, transcript 10; Lidia Sumschein, transcript 11, Helene Klein, transcript 12, Anita Lasker, transcript 13 and Geria Zylberlukaton, transcript 13.

In my submission none of these witnesses shakes the accused's insistence that he did not do any personal selecting. That is quite clear from what they say themselves, that they may very well have seen him sorting out people on parade for what they would not realise at the time were for quite different purposes, and the witnesses put a quite erroneous construction on what he was doing.

The prosecutor will certainly say that when the gas chamber selections took place at Berkenau everyone in the camp knew and must have known that the parade was for gas chamber selection and that there could have been no question of a genuine mistake having been made. That is a submission which I hope I can persuade the Court cannot be substantiated on the facts before you.

There has been a great deal of confusion, a great deal of very confusing explanations about what did happen on all these and other parades. The very fact that there has been confusion is, in itself, a significant thing. The very fact that there has been any confusion speaks for itself. I say what these witnesses are really doing, possibly quite unintentionally, is "begging the question", that because they knew there had been gas chamber selections they jumped to the conclusion that people were picked out on parade and never seen again that they were sent to the gas chamber. Some say that they knew it was a gas chamber selection because they were sent to the notorious block 25, but how many of them do other than merely assume this? In reality how could they have seen for themselves whether this really was the case? I suggest that because they were not seen again it was assumed that they went to the gas chamber, but there is no satisfactory proof at all about whether these expressions of opinion had any foundation in fact, or even that block 25 was only used for gas chamber victims.

One thing about this camp is perfectly clear, that there were many parades, and, in my submission, it is also clear that on these parades people were selected and sorted out for all sorts of purposes, namely working parties, and that those thus selected for working parties were sometimes sent away from the camp to work somewhere else and were never seen again. There were selections for scabies and there is evidence that block 25 was used to house infected cases. There were even selections for brothels, it is claimed only on a voluntary basis. In any large camp, in the Army or otherwise, people are continually being sorted out and paraded and detailed for all sorts of purposes and, in the absence of any real positive and unambiguous proof that people must have known beforehand that any particular parade was for a gas chamber selection and no other, the accused must, at the very least be given the benefit of the doubt.

There is positive evidence that people did not know what a parade was for, and I refer to the evidence of Starostka, transcript 39, and also the evidence of Schlomowicz, transcript 35. There is another feature about these gas chamber selections which, in my submission, is a very important feature indeed and a feature which, I imagine, must have puzzled the Court as much as it has puzzled me. If a very large number of people is got on parade and they know it is for a gas chamber selection what is the behaviour and temper of that parade going to be? You have been told, and it is evidence which I think must be believed, that it was very difficult indeed to keep proper order on even the morning or even roll call or appel. How much more difficult would it be to control large numbers of people who are perfectly well aware that if picked out they are going to be sent to a horrible death? I suggest that not only would it have been difficult but that it would have been impossible. What would normal human beings do in such a dire situation? Would they just stand there quietly and wait to be selected? Would they after being selected still remain quiet and orderly and wait to be sent to death? I think any such assumption is the height of absurdity. These people outnumbered their guards to a tremendous extent and I suggest that they would most certainly have panicked and stampeded, if they had no real doubt that they were going to be sent to the gas chamber, and took any chance open to them, any chance however desperate, even had they been menaced by machine guns. There is no evidence, of

course, that they were placed under any such threat.

Such a panic or stampede, in my submission, would be the inevitable reaction on any such parade. I think we would all prefer to take our chance than to resign ourselves supinely to our fate. I cannot find in the transcripts any satisfactory or convincing evidence at all that any scenes of this kind did occur and, in my respectful submission, the fact that the evidence to this effect is so nebulous is conclusive proof that the people on these parades - never mind those standing by - could not possibly have known what they were parading for. The witness, Janicka, in transcript 40, says the same thing.

The same applies to the arrivals of transport. The way the gas chamber was constructed proves a deliberate intention to avoid panic. The victims were led to what they were obviously intended to believe was a shower bath - a fact which proves that the danger of panic was certainly not underestimated. They were given a towel and sent along ostensibly to have a shower. That too explains Hoessler's puzzlement when replying to the learned Judge Advocate's questions as to what would have happened if someone started to shout and scream and struggle, and also his replies to the learned prosecutor in cross-examination. The answer must be that the intended victims did not know what was in store for them. If this is so then nobody could have known beforehand that any particular parade was in fact for the gas chamber.

As far as arriving transports is concerned all the evidence by witnesses is that they themselves were in the arriving transport and admittedly they would know later what had really been happening even though they were deceived at the time. The prosecutor might therefore say how could they have been making mistakes about Hoessler making personal selections? The Court has heard his own account of his duties, among which it is clear he did have quite an amount of sorting out to do himself, but this must be distinguished from actual selections of victims.

I submit it is quite genuine that he never made selections for the gas chamber. It is quite a natural mistake to make especially when they did not know and could not have discovered until later what had been happening at the time.

I submit, therefore, that not only is there clearly insufficient proof that Hoessler did select victims, or that his activities could permit of no other interpretation, but that there is positive evidence that there were plenty of circumstances which could have and did mislead these witnesses.

We are now left with this (apart from what I have called the special accusations) that my case is that Hoessler, though denying he selected victims himself, admits he was frequently present on these parades in his capacity as orderly lagerfuhrer. The Court has heard his evidence and I invite the Court to accept it.

The Court might now well say to me: "If he took any part at all in these parades, if we accept what he says as the truth and agree he was only there to keep order, these admissions alone involve him in criminal liability".

I am quite sure the learned prosecutor at least will say so and will suggest that anyone present in any capacity is a party to a crime, the enormity of which is too much for words and cannot be described.

A I do not and will not deny that these mass exterminations were crimes of a very horrible type, though whether they were war crimes for which these accused can be held responsible is another matter. We have heard Hessler say what he thought about it when he was first ordered to attend and how he protested. Nevertheless he did attend them because as he says he was ordered to do so.

That brings up for the first time, and the only time in my defence, the defence of acting under orders, or, as Col. Smith described it, acting under coercion. As that has been dealt with very fully it is not necessary to go through it again, and I would only like to crystallise my own submission as a part of my defence not only for Hessler but also for Volkenrath in so far as gas chamber selections are concerned. Where there is a conflict of domestic and international law I quite realise that there is a body of opinion which says that I should refuse, even at my own peril, to obey an order which is obviously unlawful and wrong according to all standards. I say the basis for that is if I refuse I will be protected by my own system, and that does not apply when there is a conflict between domestic and international law. Where there is this conflict between domestic and international law the peril in which I will stand will be not from a superior officer but from my own State and Government.

I need not labour that argument further as it has already been put before the court by Col. Smith. If I satisfy the court that Hessler did not do personal selections, and if the court accepts the argument that he was acting under orders, in my submission the prosecution might well say that there remain further specific allegations which, if proved, would destroy my submissions on the general ground. I hope, therefore, to satisfy the court that I have nothing to worry about from that direction.

There are four witnesses, Sunschein, Klein, Sempelinsky and Litwinski. They ask the court to believe that there are special circumstances to prove that Hessler's part in these selections was malicious and without any question of superior orders whatever. What do they say? First of all deal with Lydia Sunschein. (Transcript 11, pages 17 and 22) She says that Hessler found a pyjama outside her block and that he held a selection there and then because of it, and those selected were sent off, presumably, to the gas chamber, according to the witness, because she saw smoke coming out of the Crematorium chimney. I submit that this is nothing other than a colossal presumption. I suggest that on the witness's own facts, and setting aside her own opinions, and conclusions on those facts, it only shows that some type of selection was made and that those selected were taken away in the direction of where block No. 25 lay. Are you going to condemn Hessler on that?

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What does Hessler himself say about this? (Transcript 22, pages 12 and 13) He says: "All that is completely untrue. What is really true and what did happen was that there were kommandos who were working in a work squad called Union, and sometimes I got some reports about several members of that kommando that they did not work satisfactorily, or that they did something wrong. Then I made selections by taking people who were reported to that way out from that kommando and sent those in compound A into quarantine." At the bottom of the page when he was asked: "When you told us you sent people from Union kommando to the quarantine, what did you mean?" he said: "Quarantine were blocks where those who did not work were put. These blocks were for new arrivals who were put into quarantine until some sort of job had been found for them. By so doing did that mean that they were to be sent to the gas chamber?"
A. No; but I believe that the witness must have thought that those people would come into this banned block 25, which really did lead to the gas chambers.
Q. What did happen to those people you sent into quarantine?
A. I sent them there so that they should recover their strength and should be able to work somewhere else - not in that kommando, but somewhere else."

I suggest that is a perfectly reasonable explanation, that it ought to be accepted, and that there is no reason whatever to disbelieve it. The fact that there were such selections made is corroborated by the accused Staroska. (Transcript 39, page 30) So far as I can see the learned prosecutor did not cross-examine on that explanation.

Then there is the witness Klein. (Transcript 12, pages 12, 13, 15 and 16) She tells a most extraordinary story. She would have you believe that she herself was selected on a parade, came up to Hessler to plead for her life, promising to work very hard, was told she had lived too long and then ran away. I ask the court to note three things here. From the evidence before the court it would appear she was the only one who ever protested. (It would appear from the evidence also that she does not say it was Hessler who selected her.) She was not sent to the gas chamber. What does Hessler say about it? He remembers no such incident, denies its possibility and points out (very properly I think) that if she appeared to be in perfectly good health she would not have been chosen for the gas chamber anyway. He had only been in Auschwitz from November 1943, and the alleged date of this is January 1944. In other words, he accuses this witness of romancing, and that is what I suggest she is really doing.

As to the witness's credibility I would like to refer the court to the cross-examination by Capt. Munro with reference to the accused Roth. (Transcript 12, page 18.) I ask the court to say that Hessler is right, that this witness is not telling the truth. (Does the court believe that if the circumstances had been as described by this witness, and Hessler had actually taken the attitude which was described, this girl would and could possibly have escaped so easily? Or that if she had done she would not have been recaptured again very quickly?) I submit the whole story is pure and arrant nonsense and, at any rate, it proves nothing against Hessler, and I submit that his own explanation is obviously the correct one.

Then there is the witness Sompolinski. (Transcript 13, pages 9, 10, 13, 14, 15 and 17) (The witness began his evidence by insisting that Hessler was, he put it, the commandant of the gas chamber or the crematorium, and he ended his evidence by revealing both in cross-examination and in re-examination that he came to this conclusion because he thought Hessler was in charge of the transports arriving there.) I do not want to make an issue of this witness's credibility. I am willing to agree he reached a wrong conclusion because of what he thought, because it is clear that Hessler never was in charge of these transports or was commandant of the crematorium. It is also clear how the witness might have thought so. Hessler had to patrol the train, including posting himself at the far end beside where the crematorium was. That is the obvious explanation of why the witness should have come to this rather absurd conclusion.

Lastly, there is Sophia Litwinski. (Transcript 7, pages 5, 7 and 8) This, Sir, is the dramatic story about Litwinski having actually been put inside the gas chamber and then taken out again by Hessler. In the first place, that is almost the opposite of an accusation; it is Hessler who took her out and not put her in. However, that does not matter much, as I personally do not believe the witness anyway. Hessler denies it also, though if it were true why he should bother to deny it I cannot see.

Is the story credible? Has it got any ring of truth whatever? We have heard the evidence of Dr. Bendel as to conditions inside that ghastly room. Bodies were piled so high that when the doors eventually were opened they fell out. How could anyone who opened this door find this girl, apparently without any difficulty, merely by her lifting up her hand and then dragging her out to safety? Nobody else, apparently, having made any effort to escape. I submit that the whole story is fantastic.

I would also refer the court to two things. In this witness's affidavit, page 96, she said that the man who took her out was wearing a gas mask. When she was asked in court about it in cross-examination her answer was: "I do not know." I ask the court also to remember that this witness did have a fine sense of dramatic effect when she came into court. Why should Hessler deny this story if it is apparently true? Why should he go on to tell another story very like it in its main essentials, except that it was not this girl Litwinska, but another person, and that she was recused before she was put in the gas chamber? There is no reason for telling this story unless it was true, and I think the court ought to accept it to the detriment of the witness's credibility. I suggest to you that the real story should be accepted as evidence in the accused's favour rather than be construed as an allegation against him.

In any event, there are one or two rather interesting features before I go on to something else. The witness Litwinska says this selection was Christmas 1941. That is outside the period of the charge. At that time there was no Berkonau. At that time there was no Hessler. I submit, summing up on the gas chamber charge, that it is clear that it was present on orders only in his capacity as lagerfuhrer to keep order and this was his sole connection with these selections. Also I submit there was something more, that there is evidence before the court that he did everything he could not only to save as many people as he could from doom but also to improve the conditions in the camp, and to improve the lot of the prisoners in some way. We have to support that submission the evidence of Erika Schoppe (Transcript 24) Staroska (Transcript 40) Koursta (Transcript 40) and even Kopper.

I will now pass to the only remaining oral evidence in respect of Auschwitz. There is here an allegation that he attended and was responsible for the public hanging of four women, and that he executed them himself, in December 1944. The accused admits that four women were, in fact, executed in these circumstances, and the accused also admits that he himself officiated at that execution. As far as I can see, therefore, there is no difference as to facts between the learned prosecutor and myself, except this, that Hessler denies he gave the orders or he was otherwise personally responsible for sending these women to their doom. I presume this was accepted by the prosecutor as he did not cross-examine the accused on his version of what did take place.

What were the circumstances? On or about the 7th October 1944 there was a revolt at the crematorium, and these women concerned had been accused of stealing explosives in connection with that event. Then there followed a long period of time, some 10 to 12 weeks, before the execution took place. We cannot tell from the evidence whether these women were given a trial or not, and the accused is unable to tell us about it. But it is a long period of time, and we cannot assume from the evidence before us that there was no trial in the absence of prosecution evidence that there was. At any rate, it is obvious that enquiries must have proceeded throughout that period, and we are entitled to assume the thing was referred to higher authority, and it effectively disposes of any suggestion that Hessler ordered this and carried it out on his own. There is nothing in the evidence to suggest he did - absolutely nothing at all.

Then Hessler told us how he got his orders in December, failed in his attempt to avoid a "Theatre", as he described it himself, and then carried out his orders and executed the women, reading out the sentence at the same time. It is quite clear there was an offence, a serious offence in war time, that there was probably a trial or enquiry and that there was a sentence which was passed on to Hessler to carry out. The accused, therefore, is, in my submission, in exactly the same position as the public hangman and he cannot be held liable for carrying out what we are not entitled to say was not a lawful sentence of death according to the code of any country at war following due process of law. There is no question whatever about the order being obviously illegal or morally wrong, or contrary to all normally accepted moral standards. It is clearly a charge for which he himself cannot be held personally liable.

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That is all the oral evidence against this accused relating to Auschwitz, and there remains in respect of Auschwitz affidavit evidence only, and only two of those. The first affidavit is that of Adelaide de Yong (Pages 70 and 71, Exhibit 44). It is a very short affidavit.

"On the 29th August 1943 I was against my will and for no reason of health sterilized by Dr. Samuel, a German Jew, also a prisoner in the camp. Many other persons were sterilized in this camp. The orders for the operation were given by the commandant of the camp named Essler." On page 71 she identifies the accused. In the first place, of course, Hessler was not the commandant of the camp. The commandant of the camp was either Kramer or his predecessor, or more likely Bauer. How could the accused have given such orders? I submit it is perfectly clear that all this witness is doing is to confuse the identity of the camp commandant. If she was sterilized on anybody's orders it was not on the orders of Hessler. Of course there is no corroboration of it, and it is the only charge of its kind either orally or in writing.

Secondly, we have the affidavit of Kalderson on page 74, Exhibit 46. Again a very short statement. The deponent states: "I also name Franz Hessler and Theodore Houskel, whom I identify as 1 and 2 respectively on photo 9. I have seen these men repeatedly administer savage and brutal treatment to half-starved internees." That phrase "savage and brutal treatment to half-starved internees" has a very familiar ring. It runs through a great many of these affidavits and appears to me very like an answer to a leading question on the part of the investigation team. It is a very peculiar thing that this is the only allegation of its type; in the pages and pages of affidavits there is not another single suggestion of this kind, nor has any oral witness come into court and made any similar accusation whatever. There is no suggestion he ill-treated anyone apart from this affidavit and I ask the court therefore to give it no weight whatever.

I will now pass to Belson in respect of Hessler. In so far as Belson is concerned there is only one specific allegation of any kind against him, and that again is in the form of an affidavit, the affidavit of Josef Hauptman (Page 42, Exhibit 37). In paragraph three of that deposition Hauptman says: "On 4th April 1945 10,000 workers were transferred to Belson. The journey took about five days and over 100 died due to the conditions, and a number were shot en route. Attached to the train was an ambulance wagon in which the sick were carried. There were still nine of these alive when we arrived at Bergen station. Whilst I was there the S.S. man Hessler came up and gave instructions that the nine sick persons were to be shot. I did not see them shot but I never saw them again." Once more this is the only allegation of its kind. It is on paper. I have had no opportunity of cross-examining and do not even know whether a murder was, in fact, committed. It is usual in all the courts of criminal law if somebody is charged with murder to prove that the victim alleged to have been murdered is, in fact, dead, and therefore this constitutes no offence of any kind against this accused.

We are left therefore with the accused's own connection at Belson. What is it? He was there for a very few days in charge of camp No. 2 at the wehrmacht barracks. It is not in dispute, I think, that he ever was near camp No. 1 except when he went to get his orders from Kramer, and possibly on one occasion some six weeks beforehand when he came along and took away some women. He had otherwise no connection with camp No. 1, and I do not see how he himself can be said to have had any responsibility for the conditions which obtained there. They were caused and arose before he arrived, and after his arrival he had nothing whatever to do with them. He got his orders from Kramer to take over part of the wehrmacht barracks. He did so, and only took over what he was ordered to. From the evidence he did everything he possibly could to organise the camp in very difficult conditions, everything he possibly could to feed the prisoners and achieve some semblance of order. I submit that in these

efforts he was successful, in that he managed to do a great deal which could only have been done by energy and initiative; again not belittling whatever good work Kramer may have put in before his arrival.

It is therefore my submission that the accused Hessler is entitled to an acquittal on both the Auschwitz and Belsen charges leading out of the question of collective responsibility, and I now pass to the case for the accused Borman.

There are three types of charges to answer in respect of the accused Borman. One, that she had a large and a vicious dog which she trained to attack victims on command, and that this dog was, in fact, ordered by her to attack certain internees. All the instances in this connection which have been alleged are in respect of Auschwitz. The second type of charge is that at both Auschwitz and Belsen she beat prisoners viciously and cruelly. The third, that at Auschwitz she was present at and took an active part in gas chamber selections. I propose to deal, in respect of this accused, with each type of charge rather than begin with Auschwitz and come to Belsen.

The first charge, and the most important one, is that she made her dog attack women. The prosecution has produced oral evidence to the general effect that she was repeatedly identified as a woman who went about with a big dog, and there are two witnesses who speak to one specific occasion, obviously the same one, on which a Polish woman was said to have been attacked and killed when returning to camp in a kommando. As to the evidence about the dog the accused's answer is: "Yes, I did have a dog. I like dogs." In that connection no doubt the court will remember her behaviour in the witness box when I asked what had happened to the dog. She admits having a dog, except for a short period between June 1943 and March 1944, which I do not think is material.

There seems to be some confusion about this dog. Some say it was a large black dog, some a brown. Borman herself says it was not a very large dog, it was brown, and she never made it attack anybody. When she was asked to explain why it is that so many people, witnesses and deponents, are making the same type of accusation, what she says is: "I do not know. All I can think of is I might have been mistaken for a woman called Kuck, who was, I believe, like me in figure." I would like the court to notice that this is not a definite accusation against Kuck, but it is the only thing the accused can think of as to why this accusation has been made. That is, of course, my defence - the only line which I could possibly take. There is a very distinct possibility of mistaken identity, a possibility which raises such a reasonable doubt that the accused must be given the benefit of it. This doubt does not arise only from the suggestion having been made by the accused herself. I have already referred to the fact that some say it was a black dog and some say it was a brown dog. One of the witnesses who says she was attacked says it was a black dog.

There are also other substantial doubts, and the only serious obstacle to the defence of this accused is the evidence of the accused Kopper. (Transcript 42, pages 12 and 13) The court might well say that she at least cannot possibly be making any mistake about identity, and there are, as the court found out, markings on her body which the doctor says are at least consistent with dog bites. That may be so. I am not going to attempt to deny it. She might have been bitten by a dog some time.

If the prosecution is right about this, in the first place this evidence is the evidence of an accomplice, as they are charged jointly. This woman Kopper's name has kept popping up in the case like a jack-in-the-box, and, in my submission, just about as ludicrous. And in what character? As an irresponsible, hysterical, unprincipled informer and a tool of the S.S. Not only an informer but a bearer of false information.

I think the fact that she was a bearer of false information is substantiated by the circumstances of the story about when she was set on and attacked by the other prisoners - a story which, having been put to her by the learned prosecutor, I think the learned prosecutor accepts. So we are left with the fact that the prosecutor and myself agree that she was a bearer of false information, and such a mischievous bearer that the prisoners could bear it no longer and set upon her. Not only is she a ridiculous person, I submit she is a vicious one, and no weight to what she says in her statement or evidence can be given by the court. She has covered herself by untrue and irresponsible accusations which must be set aside as absolutely worthless.

What do the other oral witnesses say? There is Dr. Binko, Hanka Rosenweyg, Sunschein and Lasker. All remember her as having a dog, but they never remember having seen that dog attack anyone. That is rather strange in view of the allegations, and it is especially strange in view of the witnesses' generalisations that she treated the prisoners badly. There were only two witnesses who could make any specific allegation and they speak of what is clearly one and the same incident or, rather, meant to be one and the same incident. We thus have in the oral evidence only one incident upon which cross-examination has been possible. These two accounts of this one incident appear to me to be suspiciously alike. It is well known in courts of law by anyone who has experience of them that when two witnesses come into court to speak to the same thing - for instance a motorcar accident - they very seldom agree in detail. The first thing which struck me when Szafran came into court was there was a marked similarity in detail in her story and that of Wolgruch's.

There is something else which makes her story far more suspicious than that. She says the incident took place in April 1943. She is quite insistent about that. My question to her in cross-examination, after having heard her say it was in April 1943, was: "I want you to think very carefully and tell me ^{neatly} exactly as you can when this was", and the answer was: "It was in April 1943, and it occurred in B. Lager in block 15." That was quite a deliberate answer. There was no question about dates, and the date of the attack is corroborated by Wolgruch. It is twice repeated and twice quite deliberately answered without hesitation. I refer you to transcript 7, pages 23 and 24. There is the question: "When were you arrested?" A. On the 9th May 1943", and on page 24: "When did you arrive at Auschwitz?" A. I arrived on the 25th June 1943." She has got no hesitation about dates. You will see, therefore, that this attack which she says took place took place before she was arrested. I want the court to note this. Can this girl possibly be believed? I submit that in such circumstances the prosecutor is not entitled to turn round and say: "Dates mean nothing in this case. These witnesses cannot be expected to remember dates - even months, even years." If that were true one can only say an honest witness would say: "I really cannot remember dates." But that is just what this witness will not do, and in her eagerness to accuse somebody she commits herself to untruths so patent as to make her evidence look silly.

Remember too that it is for the prosecution to prove every material fact of their case, and it is not for me to disprove the accusation. The dates here are vital and material, a factor which, in this case, the learned prosecutor has ignored as he has made no attempt to sort out the discrepancy in re-examination. He just cannot leave it in the air and blandly suggest that the witness must be presumed by the court to have made a mistake.

I would like the court also to refer to her affidavit, page 157, Exhibit 134. That affidavit was put in by Major Cranfield, and is an affidavit on which I cross-examined the witness. There is no mention whatever of any such incident in this affidavit, and it is not as if she had not recognised the accused; she did recognise the accused and did accuse her. Would it be likely that if she had seen such an appalling incident she would not have remembered it at the time she was shown the photograph and put it in her affidavit? (The court is therefore entitled

to wonder whether this girl's evidence is not the result of a conversation between her and the other witness Wolgruch.

There is still another discrepancy as to dates which goes to the very root of the evidence, and is common to both Szafran and Wolgruch. Both say that the incident took place in April 1943, but the accused insists she did not arrive in Berkenau until the 15th May 1943, a month later. Again the learned prosecutor did not cross-examine on this date, and it would seem therefore that the evidence must stand. It is a very important feature of my case that it is a complete and unqualified denial that these attacks were ever instigated by her, and an important feature also is that she did not arrive till a time after the alleged incident. That being so, it is my submission that the prosecutor, having failed to make an issue in cross-examination of this evidence as to arrival - and taking into account too the gross discrepancy produced by Szafran - has completely failed to prove the allegation beyond reasonable doubt, and the whole oral evidence must be marched right out of court. This must be so even if you leave out the possibility of confusion with the woman Kuck, and I suggest it need only be taken into account to explain why the witness Wolgruch should have given any such evidence at all.

That disposes of the oral evidence, and you are left with the affidavits only; the affidavit of Vera Fischer, Exhibit 39; Rachella Koliszek, Exhibit 50, and Dora Silberberg, Exhibit 79. I do not propose to go into these in detail. I do not see anything to be gained by it, as they were all alleged to have taken place in the summer of 1944, a time at which the accused insists she was not in Berkenau at all, a claim as to which she was not the least shaken in cross-examination. That is her defence. That she was not in Berkenau when these offences are alleged to have happened, and the only answer is she was mistaken for somebody else.

There is one curious feature about the evidence as to this dog. She admits having her dog at Belsen, but not a single witness or not a single deponent has come forward to accuse this woman of making it attack anyone in Belsen - not a single person out of all that crowd who gave evidence to the court. I submit that is very significant. In my submission it also conclusively proves that she never did. Why give up suddenly what was alleged to have been a favourite habit. It was said by the prosecutor in his opening address to have been continuous in Belsen.

Finally, what happened to this savage dog trained to attack human beings? She had it when she was arrested and we have heard nothing whatever about it.

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C I go on now to deal with the second type of charge against her, that in Belsen she beat prisoners very severely with her fists and with a rubber stick. There are three affidavits which refer to Auschwitz and one to Belsen. Kalderon, Exhibit 46, states he saw her along with others committing brutal and savage assaults on internees. Again a rather strangely familiar phrase. Elga Schiesil, Exhibit 76, who says that she used to beat women prisoners with a rubber stick. Alexandra Siwidowa, Exhibit 41, says she beat them for wearing good clothes; that she stripped them and made them do strenuous exercises, and when too tired beat them all over the body with a rubber or wooden stick. That is all there is in respect of Auschwitz, and only one in respect of Belsen, Peter Leonard Bakar, Exhibit 61, who says that when she was in charge of the pig sty there he saw her on two occasions beating a girl severely with her fists, and that she made a habit of it.

I ask the court, first of all, to look at this woman. She is very small and very frail. Is it conceivable that she would be able to inflict such punishment on internees? I leave that to the court.

What has she got to say herself? She says she never beat anybody with a rubber or with any other kind of stick, and even Kopper did not tax her on that. But she admits that she did keep discipline by hitting with her hands. The prosecution witnesses have, of course, admitted that it was sometimes necessary. It is quite obvious that this would and did occur. The aufseherin at these camps sometimes lost their patience in what must have been a very difficult task indeed to control. It is not very surprising.

To leave the affidavits in connection with this charge, what do we find by way of contrast in the oral evidence? There is Hanke Rosenways, (Transcript 10) and Sunschein (Transcript 11) who were the only two people out of all these witnesses who came into court and said that this accused beat anybody. I have already dealt with Sunschein's credibility. Sunschein says she beat people frequently. I did not cross-examine on it because, in my submission, it in no way contradicted what she herself admits. As the evidence stands it cannot be called a war crime, it is a mere generality, giving me an opportunity of bringing up something which has rather worried me, and that is the proper English translation of the German word "schlagen." The English word "beat" is rather different, or can be rather different, in my submission, from the German word "schlagen." I understand that the German word "schlagen" can mean anything from a single blow up to a beating. But when I use the English word "beating" we have in our minds repeated blows and severe blows, and I would like to illustrate that difficulty by reference to Transcript No. 23, page 7, the cross-examination of this accused by my learned friend. "Did the other aufseherin strike internees who did not do as they were told? A. I have never seen any aufseherin beating prisoners. It was strictly forbidden. COL. BACKHOUSE: I think possibly there is a mistake in the translation there because I put "striking." I do not know if he has changed that to 'beating'. She said she did it and I want to know whether others did." In my submission it has been difficult all the way through, both for the witnesses to understand what is meant by "schlagen" and for us to understand what they mean by "Schlagen."

It again comes out in the evidence of Rosenways (Transcript 10), who says that this accused was guilty of beating, and yet when it comes to cross-examination we get quite a different picture. (Transcript 10, page 20) She says she was hit with her hands and hit once. I suggest that this is the key to the situation, and that this is typical not only of the way that witness exaggerated, not only of the difficulties of translation, but also is the real picture as to what the accused actually did do. If this accused is as bad as these various deponents would have you believe why should they be the only ones who say so? All the other witnesses who came into court must have had equal opportunity to watch her sometimes, and they do not say she did these things which other deponents say she did. Even Anita Lasker says she never saw her doing anything. It is very strange that only the witnesses who never came into court should make this allegation, and these cannot be put to any test except by comparison with the oral evidence, and we can only look at the affidavits which accuse her of beating with a rubber stick and a wooden stick. I ask the court to say there is very real doubt and no satisfactory proof produced against the accused in respect of this accusation.

Finally we have the third and last type of charge against her. That she was present on gas chamber selections. She herself has denied it. She denies she was ever on a gas chamber selection, and my defence is the same as that for Hessler, that she must have been seen on some parade or other sorting people out and sending them away and the deponents have made a mistake.

The life witnesses are Jonas and Szafran. It is very queer that there should be only two who say she was on gas chamber selection if it was correct that she was on them. An interesting point arises in

connection with the only affidavit on that. That was the affidavit of Yilka Malachowska, Exhibit 60, page 102. "One morning in January 1943 before going to work there was a selection at which Rapportfuhrer Tauber was present. He took no part in the selecting. Dormann was one of the S.S. selecting and she chose 50 girls of our working party of 150 and my sister was one of those selected. The rest of us then left the camp to go to work and on our return in the evening, as we were entering the gate, 8 or 10 lorries passed us filled with women and girls. The lorries went in the direction of the crematorium which was situated just outside the camp. I have never seen my sister again or any of the girls selected that morning." Does that affidavit prove anything beyond the fact that it obviously was not a gas chamber selection? There were no doctors present. Only 50 girls taken out of a party of 150, and they were sent outside the camp. It is perfectly obvious that they were being transferred from one kommando to another. I submit therefore that this accused is entitled to a verdict of acquittal on all charges.

I will now pass to the case for Volkenrath. There are two types of accusations to answer in respect of this accused. One, gas chamber selecting at Auschwitz and, secondly, beatings and cruelty, including taking away food etc. at both Auschwitz and Belsen.

Before I begin to consider these accusations I would like to clear up in the first place this question of identification as between the accused and her sister Weinmeger. I must remove any misunderstanding which the court might feel about that. On Transcript 23, page 24, the prosecutor says: "Some suggestion was made to some of these witnesses that they had mixed up the two sisters." That is not the case at all. No suggestion was made. It arose quite spontaneously and it was a complete surprise to me to hear it in court. What did happen was this. Only one of the witnesses who came into court recognised her by her correct name, that is Hammermensch. The witness Frommer (Transcript 7, page 10) without any prompting said on her own accord it might have been the accused's sister who made her kneel down. The witness Sunschein (Transcript 10, page 29) again quite spontaneously recognised Wolkenrath as Weinmeger, that is by her sister's name. It is clear there were two sisters who were very much alike, and that information has come before the court quite spontaneously.

I do want to explain to the court what my submission is on the effect of that. It is not that the confusion is the basis of a defence of mistaken identity. There cannot possibly be a defence of that nature, because we are agreed the sister was not at Belsen, and therefore anything at Belsen cannot be a mix-up. Similarly, we know that in Auschwitz she was in charge of the parcel department, and I do not propose to say there was any question of mistaken identity with regard to any identity which fixes her as being in charge of the parcel department. What I do suggest is that this confusion must have the effect of destroying every single affidavit in respect of Auschwitz in which the accused is not identified. Otherwise there would be far too much doubt raised as to whether her sister was being blamed or she was, and far too much possibility of error, which would, of course, be very dangerous. The court could not be satisfied that an affidavit really does concern this accused, and it must therefore have something special to connect it with her, especially as she denies them all. The affidavits, I submit, ^{which} ought to be discounted for that reason are those of Zlata Kaufmann, Exhibit 40, Schiessl, Exhibit 76, Treigler, Exhibit 7, and Fischer, Exhibit 33.

We shall then be left with certain affidavits in respect of Auschwitz, two in respect of the gas chamber, one that she made a habit of beating people, and one specific allegation that she threw an old woman down the steps of the workshops, and certain other affidavits in respect of Belsen; that she beat people, took away their food and was generally cruel. I see no point whatever in attempting to tackle these affidavits in detail. The accused's answer to them is perfectly plain and perfectly

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simple, in that she denies that they are true, and, of course, we have the dead hand of affidavit against a witness giving evidence in person on oath and subject to cross-examination by the prosecutor.

< With regard to the gas chamber charges, she admits she was on these parades a few times, but only to keep order, and that she took no selecting part. All I have to say as to that has already been said in connection with Hessler, so I will not repeat it again. I submit that there is no satisfactory proof that she did any such selecting. I also apply to her the defence of acting under coercion in so far as she was present on parade at all. >

With regard to beating, she admits she maintained discipline by hitting with her hand boxing ears. She denies she ever used a rubber truncheon or a wooden stick, or that she ever hit anyone otherwise than with her hand. I suggest, with respect, that the only way in which the court can judge the weight to be given to these affidavits is to set them against and measure them by the oral evidence.

Of this oral evidence there is remarkably little. Out of all the many prosecution witnesses who came before the court only eight came into court and referred to her in any way at all. Of that eight, Birko, Synger and Zylberdukaten all recognised her by sight but made no accusation. Lasker recognised her by name but gave no evidence against her. Jonas said she was Grese. Perhaps the court is entitled to wonder why. There are only three out of these people who say anything about her at all, Harmermasch, Frommer and Sunschein. Harmermasch speaks to what she says are two incidents, one when Kramer interrogated and hit the escaped Russian girl, and the other when the girl was said to have been taken to a room, undressed and beaten.

As to the Kramer incident, the Russian girl, she says exactly the same as Ehlert. She was present when Kramer interrogated the Russian but ^{up}like Ehlert she did not go away and remained the whole time while this girl was being interrogated. When later other girls were also interrogated, she says as oberaufseherin she had to be present, and it is a perfectly fair and reasonable explanation. She denies the second incident about having taken a woman into a room and undressed and beaten her. I suggest the explanation which the accused Ehlert has given you to this is the correct one. What she says is she thinks the witness Harmermasch is mixing up this incident with the other one, and what she

says as to her second incident is really when those five girls were sent for and then interrogated and given five strokes each. It seems to me to be a perfectly obvious and reasonable explanation, and, of course, the accused's defence as far as the first incident was concerned would also

apply to the second incident. She was present throughout in her capacity as oberaufseherin, but had nothing whatever to do with the beating.

That is the only evidence at all of any importance against her, and we are left only with Frommer, who says that made her kneel down and then went on to say that it might have been an accident.

Then there is Lidia Sinschein, who says that when people came to her store for bread they were beaten. Again we have this generalisation "beaten", and I submit that is not inconsistent with what the accused admits she did do, that is, she had to do it to prevent attempts to steal; it is perfectly natural.

Now that is all, and it is extraordinarily weak in comparison with the affidavits. There is an amazing gulf between what has been said in Court and in the dead hand of affidavits. I repeat that the only way in which the Court can judge the weight of affidavits is to compare it with the oral evidence and, I submit, having made that comparison, the Prosecution have failed to prove beyond all reasonable doubt any case against this accused.

I pass, therefore, to the case for Ehlert. This accused, No. 8, is on both charges of the indictment, but before I proceed to examine the evidence against her I shall begin my case for her by asking at once for a verdict of an acquittal on the Auschwitz charge.

<It is true that technically she was at Auschwitz insofar as she was at one of those sub-camps called Raisko. The only connection that camp had with Auschwitz is that it was administered from the Headquarters at No. 1, and it had no connection whatsoever with Birkenau with which we have been largely concerned, and it would appear from the evidence before the Court that she had no connection with this gas chamber. Furthermore, no evidence whatsoever has been produced against her in respect of Auschwitz, either Raisko or otherwise, neither affidavit nor oral, and in cross-examination the learned Prosecutor, of course, glossed it over.

I make a very special plea to the Court, therefore, at this time that on these facts she is entitled at once to a clear acquittal on this charge.

She has only one type of charge to answer, that she beat people and generally ill-treated them. Again I will take the affidavit evidence first. The affidavits of Horkowitz (Exhibit "39") and Löffler (Exhibit "57"), should be taken together. Horkowitz says that Ehlert found some jewellery on her, beat her up for it, made her run behind her bicycle to the political department, and that she was then put in the bunker for three weeks and given food every two days.

Now the accused does not entirely deny all that. She admits there was an incident like it, that this girl Horkowitz was brought to her for having jewellery, she took the jewellery from her, took her along to the political department - probably on her bicycle - and handed her over, and she denies strenuously that she beat her either before she took her to the political department or after. <If this girl therefore was beaten, in my submission she was beaten in the political department with which the accused herself had nothing whatsoever to do> and I invite the Court to accept her explanation.

A / Then there is the first part of Löffler's affidavit, in which she says that Gollasch, Volkenrath and Ehlert were jointly responsible for the deaths of many people, or words to that effect. It is quite true that these three women, Gollasch, Volkenrath and Ehlert did work together. Gollasch appears to have been the chief until later Volkenrath took over, and we have heard a great deal of evidence to show what this woman Gollasch was like, and she appears to be rather a bad type.

Now there is no way of telling from this affidavit who was really alleged to have done these things; what they were; how they were done;

which particular by whom. There is no mention of any name, and you cannot extract any name to say "This woman did that", or "This woman did the next thing", and therefore we cannot accept as evidence in Court such an explanation.

Margit Weiss (Exhibit "91") and Bialok (Exhibit "19") both describe the incident which Ehlert herself mentioned to the Court at great length as to the accused Kopper. I submit it is perfectly clear from all the evidence before the Court that this accused's story is true, that Kopper falsely informed against the prisoners, that Ehlert found out she was falsely informing against them, confronted them together, and was then powerless to stop the rumpus which followed.

There is no evidence that Ehlert took an active part in this assault. Weiss does not say so, Bialok does not say so and, of course in her statement neither does Kopper, and there is enough corroboration also by the deponent Furstenberg, in Exhibit "34".

I submit, therefore, that the story is obviously untrue and this accused was only doing her duty in the interests of the internees and she was unable to prevent what happened.

I think it right now to refer to the affidavit of Litwinska. It was put in by my friend Major Cranfield, and therefore it is evidence which I must answer. In that affidavit Litwinska accuses Ehlert of having shot a victim outside the cookhouse, but of course when she came into Court she made no such accusation. It cannot be a case of the witness having forgotten about it, because nobody would forget such a serious allegation as this. It cannot be a case of her having missed the accused in the dock. She did recognise her, and she was deliberately stood up again by my friend Captain Neave, and again she failed to make this accusation. Remembering what I am already said about the witness's credibility, I ask the Court to say that this is just another lie.

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We are left, as far as oral evidence is concerned, with three witnesses, and two of them give evidence of a nature which the accused admits. These two are Sunshoin (Transcript 10) and Klein (Transcript 12). Both of them say she was standing at the gate and struck prisoners as they passed. Both of them agree that they were hit only with the hand and in cross-examination Sunshoin also agreed that she was only given one slap.

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All this Ehlert agrees to and it is exactly what all along she has insisted is all she did. I would like the Court also to notice the evidence of Lasker (Transcript 13), who goes a little further. She says she stood by the gate, but goes on to add "she did her job very well".

The only other witness is the witness Hammerman, who again speaks to these two incidents when Kramer was concerned with interrogating the Russian woman and the other incident when - and there is no need for me to repeat again what I said before in connection with Volkenrath - the accused Ehlert admits being present during some of the time and also explains that the witness must have mixed up the other incident with what was really one and the same.

That is all there is against her. I feel there is no need to elaborate any further. There is evidence in her favour in respect of Ravensbruck, evidence which was accepted by the prosecutor in his own cross-examination, and I feel that all the evidence which has been produced before the Court is such as to corroborate that evidence in her favour, and I ask the Court, therefore, to accept her story.

We are left only with concerted action. The Prosecution's case in as general terms as I can find is on page 39 of the transcript of the first day in these words: "May I conclude my opening by saying again that

if you are satisfied on this evidence that these conditions did exist in Belson, that these conditions did exist in Auschwitz, then the Prosecution have amply made out a case against each one of those persons who you considered took an active part at either of these camps, however small it may be". That, sir, as nearly as I can make it, appears to be the Prosecution's case under Regulation 8.

I think there is very great danger of serious injustice if this Regulation is interpreted in this way, danger to justice to say that merely because the conditions in Belson were revolting, merely because the gas chamber at Auschwitz is such a ghastly thing, therefore anyone on the staff, even functionaries, are all responsible equally and all responsible for what everybody else is proved to have done in Belson and Auschwitz.

If that is true, then you would only have had in this case to select one of these accused, prove a murder against him, prove that the rest were members of the staff, and then proceed to convict. Apart from that there are elements in the Prosecution's own case which negative the proposition. Many of these witnesses were themselves functionaries: Dr. Bendel worked in a Sonderkommando, so did Sempolinski. Now if that proposition is true then these two people ought to be in the dock themselves, as they took part as functionaries in what went on at Auschwitz, and there is also Dr. Schultz who was released from captivity by the British authorities. He was a member of the staff of the various concentration camps, so presumably if this is correct he ought to be under arrest too. As they are not indicted or even under arrest, the Prosecution cannot therefore make such a broad claim, and it clearly demonstrates the fundamental danger and fallacy of making such a claim.

What does Regulation 8 itself say? It says: "Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as prima facie evidence of the responsibility of each member of that unit or group for that crime".

I would like to try and attempt to construe this Regulation with a common-sense interpretation. Where there is evidence of concerted action. First of all, what is "concerted action"? In any dictionary I can find "concerted" means "planned together", "contrived", or "mutually arranged", and I submit that it can have no other meaning than the normal common-sense dictionary meaning of the word.

Secondly, what is the evidence in this case of any such "planning", "contriving", and "arranging"? I have been through the transcripts and I can find none. Take the gas chamber. Can it be said that those were mutually arranged and planned to send all these millions to the gas chamber, or that Hoessler, Bernann, Volkenrath and Ehlerst planned and contrived in Belson to bring about a course of deliberate and homicidal starvation? If the Court are satisfied there is no such evidence, I need not really proceed any further with the argument, and these accused cannot be held responsible for anything other than they have been proved to have done themselves.

The Prosecution might, however, say that the individual crimes alleged against them by implication involve them in guilty participation, and that what they have done themselves is in itself evidence of concerted action. That is quite possible but that, of course, would only apply after the allegations which have been made against them have been proved beyond all reasonable doubt. Then and only then would what they have done become prima facie evidence which is open to me, therefore, to rebut.

Thus, if I satisfy the Court that I am entitled to a verdict of acquittal for all, or some, or any one of these four accused in respect of

their individual acts, then they must thereby also be automatically released from responsibility under Regulation 8.

< It seems that each of these four accused are entitled to a favourable verdict on their own acts, and therefore they cannot be saddled with what anyone else did and no responsibility for it whatever.

However, if the Court says they are guilty, it is my submission that they can only then be held collectively responsible for other acts of a similar type and nothing higher. If they are found guilty of having beaten people they cannot be collectively responsible for having shot people.

As I say, it would only become prima facie evidence, and therefore I can rebut it. To rebut that the Prosecution must show what those accused could have done to prevent it, to prevent these war crimes, what they could have done to prevent the gas chamber or prisoners at Belsen being starved; what they could have done and failed to do. >

I submit that that has not been done by the Prosecution, and that therefore by implication the prima facie evidence has in fact been rebutted.

The members of the Court have my sympathy for the grave responsibility which they will have to discharge in this rather difficult and very complicated case. I leave now the fate of these four accused, Hoessler, Bormann, Volkenrath and Ehlert, in your hands, confident that justice will be done.

(At 1304 hours the Court is closed).

(At 1430 hours the Court reassembles).

(The accused are again brought before the Court).

MAJOR CRANFIELD: May it please the Court. In the course of the remarks which I am now called upon to make, I propose to refer to the charge-sheet, to the bundle of affidavits, to the various volumes of the transcript, and to the Manual of Military Law. I have arranged for extra copies of the Manual of Military Law to be supplied to the court. I understand that each member of the court has the charge-sheet and the affidavits also the transcripts before him.

I invite the court first to consider the charge-sheet. The accused are charged at both Bergen-Belsen and at Auschwitz as being together concerned as parties to the ill treatment of persons interned there, and causing the deaths of certain specified persons. Then follows a list of names who are stated to be Allied Nationals, and also other Allied Nationals whose names are unknown. That is the first part of each charge.

The second part is that they caused physical suffering to other persons interned there, Allied Nationals particularly, and then follows again the names of certain persons and other Allied Nationals whose names are unknown. The part of the charge to which I shall particularly wish to direct the court's attention is the allegation of killing Allied Nationals. I ask the court to consider why there was included in this charge the names of specific Allied Nationals and why it was not sufficient to charge the accused with causing the death of Allied Nationals whose names are unknown. I suggest the answer is that unless a specific killing, the killing of a specifically named person, is included, the charge would be a bad one on the grounds of vagueness and generality.

I should like to go through the names included in the Belsen charge. I will take them in the order in which they appear, reminding the court that my accused are charged with being together concerned in causing their deaths. The first one is the Englishman Keith Moyer. The evidence in regard to his death appears in two affidavits; the affidavit of Rolf Klink, number 81, and the affidavit of Max Markowicz, number 108, and the oral evidence given before this court by Dr. Lee. I do not propose to go into that in any detail, but my submission is that that evidence proves that Moyer was shot, and he was deliberately shot by a man not before the court.

The second name is Anna Kis, and the evidence in regard to her appears on page 31 of the affidavits in paragraph 5 where a woman named Vera Fischer says: "I saw an SS cook whom I identify as Jenner deliberately fire a rifle and shoot dead a Hungarian nurse named Anna Kis". There again my submission is that the evidence proves that this woman was killed deliberately by a man not before the court. In the second place the evidence produced by the prosecution goes to prove that she was a Hungarian and, in my submission, if she was a Hungarian she cannot be an Allied National. It is a matter on which the court must take judicial notice, that a state of war existed between our country and Hungary, a state of war which has not been terminated by a peace treaty. Some reference was made by the learned prosecutor to an armistice. It may well be so. There was an armistice with Italy, but it cannot be suggested that an Italian is an Allied National, nor can it, in my submission, be suggested that a Hungarian is an Allied National. In proof of that, Hungary does not appear on the list of United Nations, the list given in the sponsoring of the War Crimes Commission.

The next name appearing on the Belsen charge is the woman Kohn, and I think it is agreed that the evidence in the bundle in regard to her has not been put in. The next name is Glinovjochy and again I think it is agreed that he has been wrongly included in the Belsen charge.

MAJOR GRANFIELD: May it please the Court. In the course of the remarks which I am now called upon to make, I propose to refer to the charge-sheet, to the bundle of affidavits, to the various volumes of the transcript, and to the Manual of Military Law. I have arranged for extra copies of the Manual of Military Law to be supplied to the court. I understand that each member of the court has the charge-sheet and the affidavits also the transcripts before him.

I invite the court first to consider the charge-sheet. The accused are charged at both Bergen-Belsen and at Auschwitz as being together concerned as parties to the ill treatment of persons interned there, and causing the deaths of certain specified persons. Then follows a list of names who are stated to be Allied Nationals, and also other Allied Nationals whose names are unknown. That is the first part of each charge.

The second part is that they caused physical suffering to other persons interned there, Allied Nationals particularly, and then follows again the names of certain persons and other Allied Nationals whose names are unknown. The part of the charge to which I shall particularly wish to direct the court's attention is the allegation of killing Allied Nationals. I ask the court to consider why there was included in this charge the names of specific Allied Nationals and why it was not sufficient to charge the accused with causing the death of Allied Nationals whose names are unknown. I suggest the answer is that unless a specific killing, the killing of a specifically named person, is included, the charge would be a bad one on the grounds of vagueness and generality.

I should like to go through the names included in the Belsen charge. I will take them in the order in which they appear, reminding the court that my accused are charged with being together concerned in causing their deaths. The first one is the Englishman Keith Moyer. The evidence in regard to his death appears in two affidavits; the affidavit of Rolf Klink, number 81, and the affidavit of Max Markowicz, number 108, and the oral evidence given before this court by Dr. Lee. I do not propose to go into that in any detail, but my submission is that that evidence proves that Moyer was shot, and he was deliberately shot by a man not before the court.

The second name is Anna Kis, and the evidence in regard to her appears on page 31 of the affidavits in paragraph 5 where a woman named Vera Fischer says: "I saw an SS cook whom I identify as Jenner deliberately fire a rifle and shoot dead a Hungarian nurse named Anna Kis". There again my submission is that the evidence proves that this woman was killed deliberately by a man not before the court. In the second place the evidence produced by the prosecution goes to prove that she was a Hungarian and, in my submission, if she was a Hungarian she cannot be an Allied National. It is a matter on which the court must take judicial notice, that a state of war existed between our country and Hungary, a state of war which has not been terminated by a peace treaty. Some reference was made by the learned prosecutor to an armistice. It may well be so. There was an armistice with Italy, but it cannot be suggested that an Italian is an Allied National, nor can it, in my submission, be suggested that a Hungarian is an Allied National. In proof of that, Hungary does not appear on the List of United Nations, the list given in the sponsoring of the War Crimes Commission.

The next name appearing on the Belsen charge is the woman Kohn, and I think it is agreed that the evidence in the bundle in regard to her has not been put in. The next name is Glinovjochy and again I think it is agreed that he has been wrongly included in the Belsen charge.

The next name is that of a woman called Konatkevich, and the evidence in regard to her appears on page 134, paragraph 3. The prosecution's evidence is that the accused Zoddol shot this woman - "I saw him pull his pistol from his pocket and quickly fire at Maria Konatkevich". There again this woman, according to the prosecution's story, was killed by one man, Zoddol alone, a simple shooting.

COL. LOCKHOUSE: I do not want to interrupt my friend, but that paragraph about Zoddol was not put before the court at all.

MAJOR CRANFIELD: In that case the same point applies to Kohn.

THE JUDGE ADVOCATE: Is it agreed that there is no evidence to support it?

COL. LOCKHOUSE: Yes; you will see for obvious reasons why.

MAJOR CRANFIELD: I can take it that it is out?

THE JUDGE ADVOCATE: Yes.

MAJOR CRANFIELD: The next seven are persons to whom the death certificates in exhibit 11 are stated to relate. If the court will refer to the English translation of these death certificates I put before them at the same time as the originals, there are two points I want to make in regard to them. First of all, in each case the cause of death is stated and, in my submission, is stated to be death from natural causes. Secondly, the dates of death are given, and I should like to point out to the court that the dates when these persons are alleged to have died are in a number of cases dates before my accused came to Belson.

In case there should be any doubt as to what the prosecution's case was in regard to these death certificates, the court will remember that I asked Captain Stewart: "Do you put these certificates in as genuine and correct documents?" and his answer was: "Certainly". That appears on page six of volume eighteen of the transcript.

There is one other minor matter which was raised at the same time by the learned Judge Advocate. That is in regard to the woman Therese Klee. It will be seen that in the death certificate her nationality is stated as "Honduras", but in the charge it is stated as British. Now the death certificate states that she was born at Solwerin in Germany and at birth she would be a German national. When questioned by the learned Judge Advocate, Captain Stewart said that he presumed she had acquired British nationality by naturalisation or by marriage. In my submission in this case, as in a number of other matters, it is for the prosecution to prove the allegations and not to invite the court to make assumptions which are convenient to the prosecution's case.

< The evidence in regard to the allegation that these seven persons were over in Bergen-Belson concentration camp is extremely flimsy. > The court will remember that it consists, I think, of three affidavits relating how certain documents were found and handed over to the British authorities; documents found by a man who stated that he could say they related to Bergen-Belson concentration camp; documents made by people who were not brought here so that they could be cross-examined. That is all the court has to support the allegation that my four accused, among others, were together concerned in causing the death of these seven people.

< If I am right, I have now struck out of the Belson charge all the specific persons whose deaths I am alleged to have caused, and the charge now reads: "Allied Nationals unknown" which, as I have already submitted, is insufficient. >

With regard to the Auschwitz charge, the only specific death alleged there is of Rachael Silberstein. There again the same affidavit, page 134, deals with that. The allegation of the prosecution (and I do not say I accept it) is that she was killed by the accused Borman, that it was quite a specific killing by the dog being set on her and her death being caused there and then. I do not propose to go any further into the charge-shoot.

My learned friend Captain Phillips will be addressing the court on the charge-shoot in more detail, but I would point out that, in my submission, it is the duty of the prosecution to prove all these allegations in every detail, and it is not sufficient for them to invite the court to skim over them by making some attractive assumptions.

I now wish to deal with the evidence against my accused, and I am going to take, first of all, the accused Klippel because it is a very simple case. The evidence against him appears on page 64 of the bundle of affidavits, and is a deposition made by a woman called Anna Jakubowicz. This woman says she is 25 years old and a Czech. She says that she came to Bolson on the 1st January 1945. Then in paragraph 3 she goes on to say: "I was employed as a cook at Bolson. Joseph Klippel, whom I identify, was the cook in charge. I have seen him frequently beat women with a rubber stick who approached the kitchen in search of food". That affidavit was taken by Major Bell who, as the learned prosecutor has shown, was an experienced barrister - with more experience, I think, than Major Smallwood who was called by the defence. The woman was employed as a cook and the accused was the cook in charge, yet it does not say which cookhouse. The affidavit was taken at Bolson camp. It would have been perfectly simple for Major Bell to have said to this woman: "Now which cookhouse was it". He could have said: "I have got here a sketch showing the various cookhouses; which one was it?". He could have taken her outside and taken her round the camp and said: "Show me which cookhouse it was". But it does not appear. She says: "I have seen him frequently beat women". She arrived there on the 1st January and the British arrived on the 15th April. My submission is that the allegation of frequently beating must relate to the whole period from 1st January to the 15th April.

She recognised Klippel by a photograph. She says: "I worked in his cookhouse". If that is true, if she was working in his cookhouse, she had a better opportunity of identifying that man than any of the ordinary internees had of identifying the SS staff. The ordinary internee was in a compound where the SS staff might visit occasionally, but this was a woman working, so she says, in the cookhouse with an SS man who was in charge. If any internee should be able to identify an SS man it should be this woman Jakubowicz. That is the first allegation of beating.

The second allegation comes in the last two lines of the affidavit: "On two occasions during March I saw him shoot a woman dead. Both were Jewesses but I do not know their names". She says: "During March". The court will remember the evidence of Major Champion, another member of the War Crimes Investigation Team, in regard to dates. He said the internees were very vague about dates. He said they very often did not know the year. They very often did not know the month. He said: "I made a practice of testing the recollection of the deponent about dates. If a date appears in an affidavit then there were reasons which satisfied me given by the deponent that she did really know the date which was put in her affidavit". Well, no doubt Major Bell was equally conscientious, and in that case he must have taken steps to see that when the woman said the shooting took place during March it was March and not February and not April.

That is the allegation against the man Klippel. I put him in the witness box and I supported him with a number of witnesses, three of them, it is true, members of the SS, but so far as they are aware they have been in custody for six months not accused by the British authorities of any crime. The fourth witness was a woman, completely independent, who had come here voluntarily to give evidence. All these witnesses support Klippel when he says that from the 1st January to the 5th April so far from being at Bergen-Belsen, he was over one hundred miles away in Mittelbau.

In the middle of Klippel's case the learned prosecutor abandoned the allegation that Klippel frequently beat women with a rubber stick during the period 1st January to 5th April, and he abandoned the allegation that Klippel killed two Jewesses in Bergen-Belsen concentration camp during that - - - - -

COL. BACKHOUSE: Again I do not want to interrupt my friend, but I have not, of course, abandoned anything at all.

MAJOR CRANFIELD: The court will remember what took place. Possibly I have stated the facts inaccurately. The learned prosecutor then suggested that the murders took place not in March and not in Bergen-Belsen concentration camp, but in the Wehrmacht Barracks in Hoessler's camp, which we call Camp No.2 in April and, as I understood him, he agreed not before the 10th April although it might be a day either way. Surely that is a completely new allegation? Has it any more substance than the original one? All the evidence we have heard, starting with the evidence of Brigadier Glyn Hughes, is that there were not woman, apart from two nurses in one of the hospitals, in Camp No.2 at all. Secondly, the evidence is that Camp No.2 did not come into existence until the 9th April.

In my submission, the matter stands in this way. This affidavit on page 64 makes an allegation to which there are four material parts. First of all there is the date when this crime took place. Secondly the place where it took place. Thirdly, who did it; and fourthly, what he did. The learned prosecutor, in my view - and I may be wrong - agrees that the affidavit is wrong in the time and place. He says everybody is wrong in this case about dates. Well, I say that this affidavit by this woman Jakubowicz is also wrong about the identity of the perpetrator of the crime and, although I am not concerned in saying so, possibly equally wrong about what took place. When the learned prosecutor says: "I have never met anybody who is right about dates in this case" and goes on to say: "Although obviously from that affidavit it was Camp No.1 the woman was talking about, possibly it was Camp No.2", and it is not surprising that the accusation can be transformed like that, then I agree with him, because nothing would surprise me about these affidavits. I consider page 64 typical of the bundle. That is the evidence against the accused Klippel - the only evidence - and I ask the court to accept Klippel's story entirely in every detail. It is fully corroborated and it was hardly challenged. I ask the court to accept his evidence as to the facts completely, and at a later stage I will make my submission to the court as to what effect those facts must have on the charges.

Now I turn to the accused Grese and the evidence against her. I propose to start with the affidavits, the first one being on page 19 of the bundle, the affidavit of Gertrud Diamant, the accusation appearing in paragraph 3. The deponent says: "Grese was the SS woman commandant of the working parties both at Auschwitz and Belsen". Let us take Belsen first. What is the evidence that you have? It is the evidence of Grese and it has been corroborated by other witnesses and has not been disputed to the effect that she was not in charge of a working party. She was the Arbeitsdienstfuhrerin in the camp.

What is the evidence in regard to Auschwitz? Again it is the evidence of Grose and I do not think it has been disputed in this respect. Her evidence is that she had a vegetable working party for a month or two before the Autumn of 1943. There is a period in 1943 when my learned friend and I are not in agreement as to the time she had a Strafkommando, but apart from those two working parties she was on duty in the camp the whole time, first of all in Camp A, then in Camp B and, later on, in Camp C. To go on with the affidavit it says: "Her favourite habit was to beat them until they fell to the ground and she kicked them as hard as she could with her heavy boots". I submit that that sentence reeks of exaggeration and embroidery. "Her favourite habit" - "Heavy boots". What is the evidence? The evidence is that her boots were issue boots just the same as everybody else's. "She frequently caused blood to flow and in my opinion many of the people she injured were likely to die from such injuries, but I have no direct evidence of such deaths". Again, is not that language obviously led by the interrogator? Quite obviously the witness was led on to say that the victims were likely to die.

The witness then goes on to say: "Grose was also responsible for selecting victims for the gas chamber". How was she responsible? What did she do? The affidavit taken by Major Champion, an experienced Clerk of the Peace, gives no details at all. Nothing that can be answered; just a joint accusation. In my submission the whole of that affidavit is contentious and is not worthy of consideration when it is set against the accused's own evidence on oath.

The next one is page 22 of the bundle. It is an affidavit of the woman Dunkelmann. Paragraph 2 says: "The chief SS woman who dealt with us was aged about 30". At this time the accused Grose would have been twenty. We have heard from a prosecution witness that in a concentration camp a woman of twenty looked twice her age, and this deponent is describing Grose, so she says, as a woman aged about 30. Then she says: "With her hair tied up at the back". There again that is, as I pointed out at the time, a very particular method of dressing women's hair in Germany, and the evidence before you is that at no time did the accused Grose dress her hair in that fashion - - -

COL. BACKHOUSE: Again I do not want to interrupt my friend, but he must keep to the evidence. Although my friend said that was the hair style, the witness, when asked about it said that was not so.

MAJOR CRANFIELD: The affidavit goes on to allege hitting with a rubber truncheon and kicking. Both those, of course, have been denied by the accused in the box. It then goes on to deal with appeals. "These appeals lasted from two to three hours". Now I accept that. "These acts were committed for not standing still at the parade or other trivial matters". This woman who is making these allegations was standing in the parade herself. She was not in charge of it. She was not assisting to control it. How can she tell what a punishment was inflicted for? She was only at Auschwitz, as she says herself, for a period of three weeks.

That affidavit is confirmed by an affidavit of four young women aged 20, 26, 20, and 27 respectively which appears on page 23. They corroborate what the woman Dunkelmann says. The woman Dunkelmann is aged 40. I shall refer again to the circumstances in which these joint accusations were made at Delsen. The court will observe that in the Dunkelmann affidavit the accused is identified in person, but on page 23 in the corroborative affidavit there is no identification at all. Again the four deponents were only at Auschwitz, so they say, for three weeks. They repeat the accusation concerning the rubber truncheon and the kicking which was denied by the accused in the box. On page 24 there is an affidavit dated the 5th June by the same deponents identifying the accused by a photograph a month after they made their original affidavit in which there was no identification, and I

should like to point out that the originator of the accusation, Durlmann, was not included in page 24 and did not identify the photograph at the same time as the persons corroborating her. The first affidavit on page 23 was taken by Major Bell and the second affidavit with the corroboration by Major Champion.

The next affidavit I want to refer to is on page 92, the affidavit of Klara Lobovits, the allegation being in paragraph 3. It deals with appels and it says: "Grosso was in charge of the appels which took place twice a day. These lasted at least two hours and more often three or four hours". Does the court believe that anybody who had to take a roll-call parade would allow that parade to last for eight hours a day, two periods of four hours a day? Or even six hours a day, two periods of three hours. However conscientious one was, is not it absolute nonsense to suggest that roll-calls went on from six to eight hours each day?

A / She continues: "If a mistake was made in counting they were made to stand until the mistake was found". Then it goes on: "She often made the internees go on their knees for hours on end". You have heard the accused in the box say to you that she did make the internees on occasions kneel down at appels, but the reason she did so was to make counting easier. Is it ill treatment which amounts to a war crime to order your internees to kneel down in order that you can count them?

B / She goes on to allege the holding of stones in the hand and she again alleges beating with a rubber truncheon and kicking, both of which have been denied by the accused.

C / She says the internees were not allowed to carry anything in their pockets and that the woman Grosso would often stop and search internees whom she would beat unmercifully if she found anything. If the regulations are that they are not allowed to carry things in their pockets what is wrong with stopping and searching them? If she found something I am prepared to accept the fact that she struck them, but to say she struck them unmercifully is, in my submission, a gross exaggeration.

D / Paragraph 4 speaks about selections. "If the woman Grosso saw a mother and daughter or sisters trying to get together", it continues, she would beat them. Is that a reasonable thing? We have heard the numbers of internees with whom the accused had to deal. We have heard that internees were known not by their names but by their numbers. Does the court believe for one moment that Grosso would know who was a mother and who was her daughter or who were sisters? I suggest that kind of accusation demonstrates the fact that these affidavits are full of contentious inaccuracies.

X { The next affidavit is on page 114, the affidavit of Catherine Neiger. This deponent's age is 23 and she again is a Czech Jewess. Her first allegation is that appels started at 0300 hours and went on for six hours. Again do you believe that if it were desired to have a roll-call the parade would commence in the dark? Do you believe also that anybody would allow a roll-call parade which she had to attend to go on for six hours? In my view that is obviously untrue and the court must accept the evidence of the accused and the evidence of the witness that parades started at 0600 hours and that they never went on for these very long periods.

Paragraph 3 again makes an allegation that Grosso took particular trouble to separate relatives. There again the remarks that I have made about the previous affidavit apply.

If the court looks at the first sentence in paragraph 3, in my submission it is a good test of the value to be put on the evidence of Catherine Neiger. She was at Auschwitz for ten days and she says people were kept in Camp C for about a fortnight only. How can she possibly know

that if she was only there in Auschwitz for ten days? She says that the rule was they were only kept in Camp C for a fortnight.

The next one is number 160, the affidavit of Trieger. This deponent at the time the affidavit was made was aged twenty years, that is to say, when she went to Auschwitz she would have been seventeen. First of all in paragraph 2 she says: "Grose was at Auschwitz from June 1942". Grose in the box said she arrived at Auschwitz in March 1943, and that was not cross-examined to by the learned prosecutor. Paragraph 3 contains an allegation of murder by shooting. When the accused was in the box I put this allegation to her and she denied it. When the learned prosecutor came to cross-examine the accused he did not put this allegation to her and, in these circumstances, I submit, subject to correction, that he must accept her story.

COL. BACKHOUSE: Once more I do not want to interrupt my friend, but I did make it quite clear to the court as they will doubtless remember, that I did not propose to go through incident after incident where it had already been denied. I asked if the court thought it would be of any assistance to them and they said no. I made it quite clear at the time.

MAJOR CRANFIELD: With great respect to the learned prosecutor I do not agree with that. Of all the allegations made against the accused this one is probably the most detailed. It is one of three murders supported by a number of accusations of less importance concerning beatings. The last accusation that should have been, as it were, taken as a general matter is, in my submission, this one. A number of other allegations were put to the accused in cross-examination but this one was not, and I still submit that in these circumstances the learned prosecutor must accept the accused's answer.

I would point out to the court that the victim of this shooting was a Hungarian and not an Allied National.

Paragraph 4 of the affidavit describes another incident of far less importance, but which was put in considerable length to Grose by the learned prosecutor when the accused was in the box. As far as I am concerned, I am prepared to accept the deponent's description in paragraph 4 apart from the allegation of kicking which, as I say, is an exaggeration in my view.

The next affidavit is number 163, the affidavit of Luba Triszinska. This is one of the dog allegations. The court has heard the accused deny that she ever had a dog, and that has been corroborated by other of the accused and by other witnesses at Auschwitz. The court will remember that when the accused Kopper was in the witness box the learned prosecutor put to her the number of aufsocherin who had dogs, and the name Grose was not given by Kopper, and her answer was not challenged by the learned prosecutor.

There is an allegation at the bottom of the paragraph which says: "I have also seen Grose at block 25 assisting and using force to lead the women into the lorries".

Now it will be remembered that Grose denied that she had ever been in block 25. Volkenrath said that block 25 was out of bounds to all aufsocherin, and this allegation was not put to the accused in cross-examination. The court will also remember that this deponent Triszinska states that she was a nurse, but the accused Kopper says that is untrue. However, I do not place very much reliance on that because I suggest that Kopper is not a truthful witness.

The next affidavit is the affidavit of Watinik which I propose to leave out now and deal with it when I come to the accused Lothe. The court will remember the accusation is a joint one against Grosse and Lothe.

The last affidavit making an allegation against Grosse is at page 46, which is the accused Kopper's statement. I refer to paragraph 2. The first thing is that Kopper alleges in the statement that Grosse came to Ravensbruck in 1941. In evidence she put it earlier still, 1940, and that, of course, was inconsistent with the accused's story when she says she arrived at Ravensbruck in 1942. That was not challenged by the prosecutor when Grosse was in the box.

Secondly Kopper says she was a blockleader at Auschwitz. That is what she says in her affidavit, but in evidence she says that Grosse carried out parades of all the blocks. It is perfectly clear what a blockleader is, and how can Kopper, with all her experiences of concentration camps, reasonably make a stupid mistake like that?

Thirdly, there is the question of the punishment kommando. You will remember Grosse's evidence that she was in charge of the punishment kommando for two days only, and in charge of the Strassenbahnkommando, which was a type of punishment kommando, for two weeks. The allegation of Kopper is that she was in charge of the punishment kommando in Auschwitz from 1942 to 1944, that is, two years. Then she says: "She was in charge of the punishment company working outside the camp for six months". In the box I tried to get her to reconcile those two statements and she was unable to do so.

The accused's story is that during that period she was doing telephone duties in Camp A and Camp B. When I put this to Kopper Kopper said only the men did telephone duties. Does the Court think that if that was true, if only the men did telephone duties, Grese would have come here and told you that she was on that duty? It would have been a very stupid lie to make and no object in it.

Now let us consider this punishment kommando of which Kopper speaks. She says that it was 600 to 800 strong and that its job was to dig up sand. I suggest that that kommando was the Vistula kommando of which we have heard from Weingartner and Sunschein. It is the only kommando we have heard of of any comparable size. Weingartner says it was 1,000 strong. Kopper said the work was six kilometres outside the camp but Sunschein in Volume 11 page 15 of the transcript says that the kommando was working on the river digging out the sand and it was seven or eight kilometres from the camp.

I ask the Court to accept my submission when I say that what Kopper is talking about there is the Vistula kommando. Kopper told us that Lobauer and Lothe were in the kommando at the same. Lobauer told us that she was in the Vistula kommando. In my submission this relates to the Vistula kommando and at no time did Grese have anything to do with it.

< Is it probable that Grese would be in charge by herself, the only aufseherin, of a kommando 800 strong? According to Kopper's story she had an S.S. man, Hershel, to assist her. Is it probable that an aufseherin would be put in charge and an S.S. man under her? >

A1 Kopper then goes on to describe how prisoners were ordered to go over to the wire and were shot by the sentries. > The Court will remember my cross-examination of Kopper on that point. Is it a likely thing that any internee could mistake the challenge of a sentry? Kopper says < 30 B prisoners were killed every day. > Well, whatever the prosecution may say about what happened in these strafekommandos, if 30 prisoners were killed each day should we not have somewhere some corroboration of this story? Is not it obvious that it would have been well-known throughout the camp what was going on? >

The final part of this account which you are asked to believe is this inquiry. First of all Kopper says that an S.S. guard was up before the political department accused by Grese. Then she goes on to say that at the inquiry Grese herself was not there but Kopper, a prisoner, was there and was allowed to give evidence and, apparently as a result of her evidence and the guard's evidence, the guard was acquitted.

She says the S.S. man was paraded in front of the inquiry handcuffed for her, Kopper, and the other prisoners to look at. Is that a reasonable story? In my submission it is the last thing that would have happened in the political department of a concentration camp, that a prisoner would be allowed to see an S.S. man handcuffed. Why should he be handcuffed for an offence of this nature when the very next day he was back on duty?

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The last nonsensical part of this story, in my submission, /that Kopper says she wrote to her son telling him of the death of the woman who at one time is called Gutterweiss and the next moment called Guttenmann. Kopper's son, she told you herself, was a boy of eight or nine years old. Does the Court believe that story? I have gone into it in some detail because it is apparently put forward seriously by the prosecution and, of course, it is a murder charge. I ask the Court to say that it is inconsistent and is nonsense from beginning to end. I go further and adopt what my friend, Major Munro, said this morning (which I think I have already indicated myself) that this woman, Kopper, is a vicious liar and not a word she says can be relied upon for one moment let alone be relied upon as evidence against Grese.

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The last nonsensical part of this story, in my submission, that Kopper says she wrote to her son telling him of the death of the woman who at one time is called Gutterweiss and the next moment called Guttemann. Kopper's son, she told you herself, was a boy of eight or nine years old. Does the Court believe that story? I have gone into it in some detail because it is apparently put forward seriously by the prosecution and, of course, it is a murder charge. I ask the Court to say that it is inconsistent and is nonsense from beginning to end. I go further and adopt what my friend, Major Munro, said this morning (which I think I have already indicated myself) that this woman, Kopper, is a vicious liar and not a word she says can be relied upon for one moment let alone be relied upon as evidence against Grese.

That is all the additiv evidence against Grese and I have now got one or two remarks to make about the oral evidence. The first witness who came here and made allegations was Dora Szafran. Her evidence appears in Volume 7 of the transcript starting at page 24 and goes on in Volume 8 on page 7. Her first allegation is at Belsen and it alleges that she saw Grese beat a girl in the camp with a riding crop.

The Court will remember the cross-examination of that witness about the riding crop. At one moment she did not know what it was and the next moment it was a leather riding crop. First of all she said Grese had a pistol and later on she said she had a pistol at Auschwitz. This is the only allegation of beating in the camp at Belsen.

What does Grese say? She has been perfectly frank and honest with the Court. She was the first of the accused to come here and say: "Yes, I had a stick", "Yes, I hit the internees with a stick" and: "Yes, I intended to hurt them when I hit them". She says that "at no time at Belsen did I carry a stick or did I strike an internee with anything other than my hand". She was corroborated by Unterscharfuhrer Muller who says: "I saw her frequently during March and at no time did I see her with a stick".

The allegation given in evidence by Szafran in the box was not mentioned in her affidavit. This was a witness who, having been called by the prosecution and given her evidence in chief and been cross-examined, when re-examined produced the extraordinary story of two girls jumping out of a window and being shot by Grese. That allegation was put to the accused Hoessler and he denied it. Not only did he deny it but he said it was nonsense because in this block where it is alleged to have taken place the girls could not have jumped out of the windows; they were fixed windows and if they had tried to jump through they would have carried the glass and framework and everything with them.

I ask the Court to disbelieve this story. It is an accusation of murder and, if it is true, why was not it produced in the affidavit? If it is true why was not the learned prosecutor told by the witness of this incident and it brought out in examination-in-chief? What I suggest happened was that she was asked a general question, thought she had not said enough, and pinned that piece on and concocted it at the time. I dare say something of that sort may have happened, that she pinned on to the accused Grese this story.

The next witness was Ilona Stein, and the Court will remember she gave evidence of two incidents. The first is an incident at a parade when internees, she says, tried to hide and were shot. I would like the Court to compare what she says in the transcript in Volume 9 page 12 -- it starts at page 12 -- with paragraph 5 of her affidavit which appears on page 144 of the bundle.

In paragraph 5 of the affidavit she says: "At a selection a Hungarian woman tried to escape and join her daughter. Grese noticed this and ordered one of the S.S. guards to shoot the woman. I did not hear the order but I saw Grese speak to the guard and he shot at once".

In the transcript the woman has become three people, one of them being a man. Is not it obvious that this is a muddle of two or three incidents? Is the Court satisfied that that kind of evidence is sufficient to support a charge of murder? It is not alleged that the accused shot anybody but it is first of all alleged that the accused, an aufseherin, ordered an S.S. guard to shoot a woman. (Does the Court believe, in view of the evidence we have had, that an aufseherin has any power to give an order to an S.S. guard?)

In the witness box the evidence was Grese spoke to somebody and the woman was shot. (In the affidavit she says: "I did not hear the order".) In my submission that kind of evidence in an allegation of this nature, as serious as this, is absolutely worthless.

The second matter to which the witness Ilona Stein speaks is about the mother and the daughter who were speaking over the wire from one compound to another. I do not deny that if Grese saw two women doing something which was contrary to the camp regulations that she would go up to them and that she might strike one of them, but what is the evidence? The evidence in the affidavit is she tore off her leather belt and beat the woman with it.

I have produced to the Court the belt worn by the aufseherin at Auschwitz. You have it; it is an exhibit. Could anybody conceivably think that anybody could be beaten with a belt of that sort? It is so light, so flimsy, you could hardly tell you were being struck by it, let alone beaten with it. That, again, is, in my submission, an indication of the kind of evidence, an indication of the kind of witness, you have before you.

The rest of the evidence, the oral evidence, against Grese is not material apart from Rozenwayg and Gryka whom I will deal with when I come to the accused Lothe. Before I leave the evidence against Grese I want to draw the attention of the Court to two matters. First of all eleven witnesses came here and recognised Grese in Court. Of those eleven five no allegation of any kind against her either at Auschwitz or at Belsen. If it is true, as some of the witnesses say, that she was notorious, that she was a ferocious savage, that she was the worst S.S. woman, is it likely that five out of eleven of the witnesses would say: "I recognise her; she was the aufseherin during so and so. I know nothing against her"?

The same thing applies to the affidavits and I would like the Court to have a look at page 89, the affidavit of Renate Lasker. Paragraph five says -----

MAJOR STEWART: I am sorry to interrupt but, so far as I am aware, that is not before the Court.

MAJOR CRANFIELD: I think it is 98.

THE JUDGE ADVOCATE: 89 did you say?

MAJOR CRANFIELD: Yes, I said that.

MAJOR STEWART: 89 was not read.

THE PRESIDENT: 98 was read.

MAJOR CRANFIELD: It is paragraph 2 of 98: "I name three S.S. women as chiefly and jointly responsible for the deaths of many women prisoners", and again at page 149 paragraph 1: "I saw the following persons take part in these selections" and it says: "S.S. women Mandel, Drechsler, Hasso and Brandel". Both these cases are cases where quite obviously during interrogation of the deponent the interrogator has said: "I want you to say who were the S.S. people who were responsible for these atrocities; who were the leaders of these people" and in each case Grese is not mentioned.

Now I want to turn to the evidence against Lobauer. I will take the affidavits first. The first affidavit is No. 17. Paragraph 2 says: "I recognise Lobauer as being the lagerkapo". I am prepared to accept that. "She very often beat people with a stick for no real reason at all". There again how could this woman, Dembowska, a prisoner, judge whether there was a reason for a punishment? "She later acted as arbeitsdienst and was always brutal to women".

What is that affidavit worth? It is a generality, it is all a matter of degree, and you cannot cross-examine the witness and, in my opinion, the Court should pay no attention to it.

The next affidavit is on page 19, the second half of paragraph 3. This again is an allegation of savagely beating women - in my submission an exaggeration. Diamant says: "Many of the victims that she has beaten have collapsed and in my opinion were likely to die of their injuries". The Court has seen Lobauer in the box and she has denied it and it is for the Court to judge between her evidence and the affidavit.

The next one is page 65, paragraph 2, the last sentence: "As the lagerkape I have seen her help in the selection of persons to go into the gas chamber". <How did she help? What is the accusation against her? It is quite impossible to say. It is quite impossible for Lobauer to defend herself against an allegation of that sort.

Paragraph 3 says: "I have seen people in hospital as a result of beating which they told me Lobauer had given them". As Major Munro pointed out this morning hearsay in an affidavit should be disregarded.

Paragraph 4 says: "I have frequently seen her beat women". So far I would accept that. "with a whip or a stick. She was very cruel". That, I say, is embroidery. You heard the accused here in the box and she denied it.

Paragraph 5, I suggest, is the only real piece of evidence and the rest can be struck through. Paragraph 5 says: "On one occasion she came from her block with a stick", and I am quite prepared to accept that Lobauer did do so.

The next one is page 117. This confirms the last one. Paragraph 3 confirms the blow which the witness spoke about in the last paragraph of the previous affidavit. Is it a war crime? Can it be held to be a war crime because it is alleged that Lobauer gave Jasinska a hard blow, assuming it to be proved?

With regard to the rest of this affidavit by this woman Ojreyzka, she says that Lobauer as arbeitsdienst forced old women to work. That is directly contrary to the story which the prosecution put before us - so far from being forced to work the old women were hurried away into the gas chamber, and if it is true Lobauer did force or did see that the old women did go out on the working parties it can only be described as a kindness.

The next is on page 163, paragraph 3; Triszykska. It starts off with what I would put before the Court as a typical piece of prejudice. "She wore a black triangle on her blouse denoting her to be a social outcast. In her case I believe she was a prostitute". She goes on: "I have often seen Lobauer search these prisoners". I do not dispute that. "and if she has found vegetables etc. on them she has beaten them with a wooden stick" I do not dispute that "or rubber stick". Where are these rubber stick? Almost everyone of these young women, whether they are making affidavits or whether they are coming and giving evidence, start off by talking about rubber truncheons and, in the end, the rubber truncheon disappears. As far as I know the only piece of rubber ^{which} was a bit of hose, which has ever been proved to have been used in this case was the one referred to this morning in the hands of Weingartner.

The last sentence in paragraph 3 says: "I have also seen her outside block 25 at Auschwitz chasing into lorries those people selected for the gas chamber". I do not accept that as true. The accused has denied it. But if it were true, what does it amount to?

The next one is page 174. Here again, in paragraph 4, I am prepared to accept what the witness, Miriam Weiss, says and all I can say about it is: can it be said that that is a war crime?

The last one is on page 231, the deposition of Elisabeth Herbst. This is an allegation which amounts to a murder and it is uncorroborated by any other witness although, from the nature of the story, if it is true, there must have been any number of witnesses of what took place.

In my submission, on the face of it a peculiar story. I suggest that you would require serious consideration as to whether, as it stands, it amounted to evidence of murder. You have heard the accused Lobauer in the witness box. It was put to her and she denied it absolutely. She said it was completely untrue, and she was cross-examined and unshaken, and I ask you to accept her word. It is a matter for the court to judge between the uncorroborated affidavit and the evidence of the accused.

The last one is on the next page, page 232, Borenstein. This is the case of the woman who had her shoes bound up with blankets. To start with, what had happened was that this woman had cut up a blanket issued to the blocks and was using it to tie on her shoes. That was an offence against the camp regulations, and Lobauer says if she found her doing that she very likely would have beaten her and hit her with her hands, which is all that is alleged against her. As far as the woman going out without any shoes is concerned, in my submission it is no very great hardship for these countrywomen from Poland to go to work in bare feet. One sees that kind of thing all over Italy, and no doubt in Poland as well. These are all the affidavits against Lobauer.

The oral evidence amounts to nothing. There is an accusation by Ilona Stein that "At any opportunity she beat us and hit us if anything seemed wrong at roll call." Now I am quite prepared to say that although that is exaggerated something of the sort may have happened. Of all the witnesses who came here, eleven witnesses, five of them recognised Lobauer, and of those five only two said anything against her at all. Those two were Stein, whose evidence, as I have just said, amounts to practically nothing, and Janiska, who said she assisted in transporting people to the crematorium; she helped to prevent people escaping at the selections.

You have heard the accused say she had nothing to do with Block 25. She certainly had nothing to do with the gas chamber, and I should imagine that by crematorium Janiska means block 25. As far as selections are concerned you have heard her say that her duties did not include going on the selection parades.

Now, Sir, the last of my accused is Ilse Lothe, and the evidence against her is contained in three affidavits, and I ask the court to consider these affidavits together. Eva Gryka, page 35; Rosenways, Page 126, and Watinik, page 169.

THE JUDGE ADVOCATE: Do you say affidavits? They are oral evidence, are not they?

MAJOR CRANFIELD: Gryka and Rosenways came here in person and I put their affidavits in. Watinik is also an affidavit. I put the affidavits in, and I want to deal with the affidavits, if I may. I have submissions to make in regard to them. First of all the court will observe that all the affidavits were made on the same day, the 28th June 1945. They were all sworn before Major Champion, and they were all translated by Duschene. The ages of the deponents were 23, 24 and 22, and when the offence described took place they would have been two years younger - very young girls.

The court will also see that from their addresses given in the affidavits it also appears that Gryka and Rosenways lived next door to each other in Poland. The court will remember the circumstances in which those affidavits came to be made. I do not think there is very much dispute about it. I got it from Gryka and Rosenways in cross-examination, and the accused Lothe also told the court her account. Over a month after the liberation of the Belsen camp Lothe was one of the very few Germans left in Belsen. One day she was walking through the camp when she was accosted by the three deponents, and they started to shout at her, saying she was a kapo at Auschwitz, and to abuse her. While this was going on a British soldier saw what was taking place, and after Lothe had walked on he enquired what the trouble was. The three deponents said "That woman was a kapo at Auschwitz, and thereupon the soldier brought Lothe back again and took the

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entire party off to the war crimes office. My submission is that the intention to accuse Lothe did not arise in the minds of these three deponents until they found themselves in the war crimes office. Then they would be asked whether they had anything to say against this woman, and I invite the court to say that these three young Polish Jewesses then decided that they were not going to let this German kapo get away and they made accusations, and as a result these three affidavits were made.

I would direct the attention of the court to the affidavits. The affidavit of Gryka says, in passage three: "In July 1943 at Auschwitz I was employed digging ditches and graves for the dead." The affidavit of Rosenways says: "In July 1943 at Auschwitz I was employed digging ditches outside the camp." The affidavit of Watinik says: "During the summer of 1943 at Auschwitz I was employed digging trenches." The affidavit of Gryka goes on in that paragraph to describe an incident about Rochla Grunwald. In describing that incident Gryka says: "Grunwald put down her shovel." The affidavit of Rosenways goes on to describe a different incident concerned with Gese's dog, and in describing that uses the words: "I laid down my shovel." The affidavit of Watinik goes on to describe a third incident totally different from the first two, concerned with a man called Schadowski. My submission is that that coincidence is inconceivable unless there was collusion between the three deponents. My submission is that these three young girls made up their story together, they got inside and they told different stories but they all had the same details in them.

Now, Sir, I want to go to each one individually. First of all, the affidavit of Gryka. The last six lines of paragraph three. "I am of opinion that Grunwald met her death in the gas chamber because due to the beating she had received by Loth she was unable to work, and all persons unable to work or who were ill, were automatically sent to the gas chamber. In this way Lothe has been responsible for sending many people to the gas chamber."

Again, in my submission, that is obviously a led statement, and that was produced by this kind of leading to a young girl of this type - a wild allegation.

Compare what Gryka says in her affidavit with what she says when she comes to court (Volume 14, page 10). First of all, she says that it all took place when they were road mending. Then I asked her about the dog incident, which is not in her affidavit, is left out. It is in the other two but not in her's. Then she says: "In this kommando which we were all, in, which Lothe was in charge of, there was not any S.S. woman who came with us." I asked her to be absolutely certain about that, and she says: "No, it was not a woman, it was an S.S. man, and it was he, the S.S. man, who had a dog."

Now the affidavit of Rosenways. What is the evidence of the accused Lothe? First of all she says: "I was not a kapo in July 1943 at all", and she explains in great detail the kommandos she had and the dates when she had them. She says: "I remember at Ravensbruck authentic setting dogs on the prisoners. Now if she admits that that took place at Ravensbruck why does she deny that Gese did in Auschwitz. She has nothing to lose by denying it. The allegation is not against her. If you take all the evidence about Gese ever being in possession of a dog can you come to the conclusion that this story is true?

That is all I propose to say about the evidence in detail. I want to make one or two observations on the evidence as a whole. First of all, the witnesses who came here. I do not want to dwell again on the fact that they were all of them young, that they were all of them Jews, and the great majority of them were girls. But there are two points I want

to make. First of all, by far the greater number were uneducated. Few of them had any intellectual attainments. Secondly, I want the court to consider what the mental condition of an internee at the concentration camp at Belsen was after the liberation. The court will remember the affidavit of Col. Johnson in which he said that it would have an effect in a greater or lesser degree on their mental capacity. Major Berney told us that one block was set aside for mental cases. Mr. Le Druillennec told us that he was only recently out of hospital. Schlomoivicz when he was asked for an explanation of the extraordinary way in which he was accused by two of his friends said he could only think it was because they had recently had typhus and it was a figment of their imagination.

All through my case has been that the evidence given by a large number of the prosecution witnesses is embroidered and exaggerated, and I want to substantiate that. I will take, first of all, the witness Litwinska. The court has heard what Major Munro had to say this morning about Litwinska. I associate myself in every way with that. I ask the court not to believe for one moment that that story is true. If you read it now in the cold light of the transcript it is inconceivable when compared with the evidence of Dr. Bendel. Where did she get it from? In my view, first of all she heard from her friend Binko what she had seen when she, Binko, went over the gas chamber. She also heard the story that must have gone about the camp of the girls saved from the gas chamber by Hessler, and she put the two together, and wanting to make a dramatic entrance she produced this, in my submission, stupid and unreal story.

I would remind the court that this was the woman who when I stood up Klippel said: "I recognise him", and when I pressed her she said: "Oh well, perhaps it was a mistake." She was the woman who was prepared to recognise anybody; she was prepared to swear away anyone's life.

The second example I give to the Court is the witness Keppel, who comes here and says she was so badly beaten that she is suffering from heart disease, and she says: "I will prove to you that I was suffering from heart disease when I was beaten unconscious, because I cried out 'My heart, my heart'". Any witness who comes here and puts forward a preposterous story like that can only be, in my submission, a very badly educated and a stupid girl, and to rely upon what she says with any degree of certainty is, I say, a very hazardous business.

Another example is the witness Klein. The Court will remember she alleges that Greso gave them half an hour of making sport at Belson. "Making sport" is what we should call physical training. She then goes on to say that while this was going on Greso beat them and gave them various tortures. When I came to cross-examine her I said: "Well, what were those various tortures", and it turns out it was nothing at all; it was just put in to make the story sound better. "There was not only making sport, but as a punishment extra drill and beating as well, and there were various tortures as well". All the way through this case you see the same thing, embroidery and exaggeration, and when it is challenged what does it amount to - nothing at all.

The last example I give you is Dr. Binko. There again she talks about beatings, and when you challenge it it turns out to be a box on the ear. I invite the Court to look at the transcript of Dr. Binko's cross-examination by my friend Major Brown, whose time and time again he asks her a question and she refuses to answer it in case anything she might say might tell in favour of the accused. Three or four times she is asked a perfectly simple question - and she is one of the few with intelligence who can understand perfectly simple questions - and she prevaricates and refuses to answer in case she should say a word which might be thought to be in favour of any of the accused.

That is the evidence against us. Now you have seen the accused in the box and, in my submission, they compare very favourably with the witnesses for the Prosecution. Their answers have been straightforward and they, of course, are the only people here who know what took place at Auschwitz, how Auschwitz or Belson or anywhere was organised.

All the evidence for the Prosecution is the private soldier's view of what takes place, and I need not remind the Court of how far from the truth the private soldier's view often is.

In only one case have I been able to produce witnesses for the Defence, that is in the case of Klippel, and I ask the Court to agree with me that in that case the witnesses who were produced were honest witnesses and gave honest evidence. Now in the other cases I have not been able to produce any witnesses, but I submit that that should not tell against the accused. The accused are in a very difficult position in regard to the production of witnesses. To start with many of them, Greso among them, live in what is now the Russian Zone with which we cannot communicate, and we cannot get people to come here. Secondly there is a very natural hesitation on the part of the persons who could give evidence for the accused to come here and do so. They know it is reported in the newspaper what happens to Neumann in the witness box, they know what happened to Dr. Schmidt, and I submit that it should not tell against the accused in any way at all that their evidence is not corroborated by independent witnesses of their own. Any suggestion that because their story is not corroborated by a witness who is not in prison or is not one of the accused should be disregarded.

Now the witnesses that we have produced, Krutzyer and the Polish witnesses, have, in my submission, shown themselves to be honest, and their evidence should be accepted where it conflicts with the evidence of the Prosecution. They have got no axe to grind whatever, they have got no

revenge to take and they have volunteered to come here, and their evidence should be accepted.

One thing about the accused Greso. As she told you she is only the daughter of an agricultural worker and she has not got any education, and she was severely, and properly, cross-examined by the learned Prosecutor. It may be suggested to you that her demeanour in the witness box under cross-examination showed that she is a bad tempered woman, and a woman likely to commit the offences charged against her.

Now before the Court accept any such suggestion, if any such suggestion is made, I would like the Court to consider the position of the accused. They have been in custody for a very long time; this is a very long trial; it has been a great strain on everybody and the greatest strain must have come on them, and when they come to give evidence in the witness box they are under a very great strain, and it is only natural if they are being asked questions and accused of things they did not do, that they should display spirit when they are answering.

Now one other matter about the oral evidence, the accused's oral evidence, and that is this. The learned Prosecutor has sought to build up his case from evidence which he has obtained from various accused in cross-examination. If the accused go into the witness box that is a course which is open to them, but I ask the Court to notice one particular aspect of the matter, and that is this. If the learned Prosecutor cross-examines a witness as to credibility at the outset of his evidence, he cannot then go on to say, having done that, "I will take something out of the latter part of this witness's evidence to build up my case". In a number of cases here the accused have gone into the box and the learned Prosecutor has said to them at the outset: "You are a dishonest witness". Having done that, at a later stage he says: "Well, now what about so and so, or what about such and such", and he obtains evidence which may be useful for his case.

I ask the Court to disregard any evidence obtained in that way. In my submission it is for the Prosecutor to cross-examine a witness and get evidence from him, and if he is not satisfied with what he has got then at the end to go for the witness's credibility. In my submission he cannot have it both ways. Either the witness is a liar, as the Prosecutor says he is, and in that case the Court must not believe the rest of it.

I will give an instance of that. In the case of the accused Starostka she was alleged by the Prosecutor to be an informer, but that did not stop him asking her a lot of questions as to what went on at Auschwitz.

I want to go on to make some remarks about the affidavits, and I do not know whether that would be a convenient moment to adjourn. I would rather break off now if I may.

THE PRESIDENT: Yes.

(At 1740 hours the Court adjourns until 0930 hours, on Friday, 9th November, 1945).

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I want to go on to make some remarks about the affidavits, and I do not know whether that would be a convenient moment to adjourn. I would rather break off now if I may.

THE PRESIDENT: Yes.

(At 1740 hours the Court adjourns until 0930 hours, on Friday, 9th November, 1945).

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